DOCUMENT RESUME

ED 192 431 EA 012 494

AUTHOR	Lewis, Larry, Ed.
TITLE	Oklahoma Teacher Termination Hearing Judge Decision. Volume 1. A Critical Issues in School Law Series.
INSTITUTION	Oklahoma State School Boards Assoc., Oklahoma City.
PUB DATE	31 Dec 78
NOTE	75p.
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	Administrator Responsibility; Competence; Court Litigation; *Dismissal (Personnel); Elementary Secondary Education; Hearings; *Job Performance; Legal Responsibility; Principals; *Teacher Behavior; *Teacher Dismissal; Teacher Effectiveness; Teacher Responsibility; Teachers
IDENTIFIERS	Oklahoma

ABSTRACT

According to Oklahoma law, terminated tenured teachers have a right to a hearing before a hearing judge to contest the school board's decision to terminate that teacher's contract. Copies of the written reports of these hearings submitted by the hearing judges to the State Board of Education are reprinted in this volume. Twelve cases and their decisions are reported. The statutory causes for termination include immorality, willful neglect of duty, incompetency, and moral turpitude. (Author/JM)

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4400 North Lincoln Blvd. — Suite 42
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OKLAHOMA TEACHER TERMINATION HEARING JUDGE DECISIONS

Larry Lewis
Editor

EA 012 494

Volume 1
1978

A Critical Issues
in School Law Series

PREFACE

Effective June 17, 1977, the procedures involved in the dismissal or non-renewal of Oklahoma teachers were significantly changed by 70 O.S. §§ 6-102 and 6-103. Basically, these statutes grant the tenured teacher the right to a hearing before a hearing judge to contest a school board's decision to terminate that teacher's contract with the school district. 70 O.S. § 6-103.9 states these hearings shall be conducted according to the provisions of the Administrative Procedures Act. Section 312 of that Act holds that final orders in the hearing process are to include findings of fact and conclusions of law. Likewise, 70 O.S. § 6-103.12 declares the decision of this written order shall be final. In turn, Section 302(a)(4) of the Procedures Act mandates that each agency subject to the Act shall make available for public inspection all final orders, decisions and opinions. Reading the new teacher termination statutes and the Administrative Procedures Act together forms the basis for the public release of the hearing judge reports. The "Oklahoma State Board of Education Policy Bulletin and Guide for Implementing Senate Bill No. 249" states on page 23 that "all such records shall be public records maintained by the State Board of Education, subject to public inspection except for such records declared confidential by law." No provisions in the teacher termination statutes or in other state laws require that the final orders of teacher termination hearings be kept confidential. Accordingly, copies of the written reports submitted by the hearing judges to the State Board of Education are reprinted in this volume. The date of each decision is the date when the order was received by the State Board of Education rather than the date when the report was actually written.

In order to present a common format of the decisions, which have been written in various styles, the editor has made some slight cosmetic alterations of the original hearing reports. These adjustments are aimed solely at presenting a uniform appearance of decisions which have been written in diverse structural forms. The editor has not changed any of the words of the decisions.

This volume is produced by the Oklahoma State School Boards Association and is the first of yearly volumes which will contain hearing judge decisions. The Association hopes that making this information available in a readable form of annual volumes will be of assistance to hearing judges, litigants, and the cause of education in Oklahoma.

Larry Lewis
Editor
Legal Counsel, Oklahoma State
School Boards Association

December 31, 1978

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CHAPTER 1

STATE OF OKLAHOMA

IN THE MATTER OF THE APPEAL OF RANCE ROBISON

-VS-

THE WAGONER BOARD OF EDUCATION INDEPENDENT SCHOOL DISTRICT NO. 19

November 18, 1977
Dennis W. Hladik, Hearing Judge

DECISION

Insufficient evidence was presented to show by a preponderance of the evidence that Rance Robison was guilty of incompetency, willful neglect of duty, or moral turpitude.

FINDINGS OF FACT

Rance Robison was employed by the Wagoner Public Schools for the past fifteen (15) years as vocational agriculture instructor and F.F.A. (Future Farmers of America) sponsor. During each of these years he was recommended for reemployment and he did have tenure.

During the years 1973 through 1977, Wagoner High School F.F.A. Chapter purchased the following amount of sausage and was billed the corresponding amount by the Blue and Gold Sausage Company:

Chapter Cost	Date of Payment	Amount Paid
$1,383.20	2/19/74	$1,383.20
$2,300.00	6/3/74	$1,940.00
$1,880.00	11/15/74	$2,240.00
$1,504.00	2/7/74	$1,504.00
$2,780.00	11/1/75	$2,780.00

$2,780.00	2/9/75	$2,400.00
$2,500.00	5/31/76	$2,750.00
$3,375.00	11/17/76	$3,375.00
$2,000.00	4/15/77	$1,800.00
$1,000.00	6/29/77	$ 900.00
$21,502.00		$21,072.20

Upon delivery, members of the F.F.A. Chapter would sell the individual packages of the sausage to the general public at a suggested retail price.

The proceeds were given to Rance Robison by the students. In an effort to avoid sales tax on behalf of the F.F.A., a portion of the proceeds were used to purchase cashier's checks payable to Blue and Gold Sausage Company. The balance was deposited in the School Activity Account in the form of "Donations."

The Wagoner Public Schools did maintain an activity account for use by organizations within the school system and good bookkeeping procedures were utilized. Teachers were instructed at the beginning of each school year that all money taken in by organizations was to be turned in to the high school secretary on a daily basis and all bills were to be paid by the administrative staff.

Monthly reports of organizations' deposits and withdrawals within the activity account were prepared and reviewed by the principal and superintendent. After the superintendent reviewed each monthly report, they were presented to the board of education for approval. There is no showing that the principals, superintendent or board of education disapproved of the monthly reports prior to June of 1977.

There is no evidence to indicate that Rance Robison is incompetent in the performance of his teaching abilities with the exception of the management of the F.F.A. account.

There is no showing by a preponderance of the evidence that Rance Robison misappropriated any sausage money or attempted to conceal the manner in which he handled these funds. However, there is a showing that sausage sale records were kept by Mr. Robison in an extremely poor and haphazard fashion.

There is no question that the manner F.F.A. money was handled during the years 1973 through 1977 was in violation of official school policy.

It has been shown by a preponderance of the evidence that Rance Robison knew or should have known that pursuant to school policy all organizational income should have been deposited in the School Activity Account and that all organizational bills were to be paid by the administrative staff during the years 1973 through 1977. However, it has been shown by a preponderance of the evidence that the school administrative staff, including secretaries, principals, and superintendent, knew or should have known that Mr. Robison was not using the School Activity Account during the years 1973 through 1977, but failed to take any action whatsoever prior to July of 1977.

In July of 1977, Dr. Charles Clayton, superintendent of the Wagoner

Public Schools, formed the opinion that Mr. Robison's failure to use the School Activity Account for all of the F.F.A. money received during the years 1973 through 1977 constituted moral turpitude, willful neglect of duty and incompetency. No action whatsoever was taken by the school administration to correct or supervise Mr. Robison. Upon Dr. Clayton's recommendation, Rance Robison was dismissed by the school district on August 22, 1977.

CONCLUSIONS OF LAW

Rance Robison was not guilty of willful neglect of duty.

The Oklahoma court has ruled that:

> ". . . a willful neglect of duty means that the act or failure to act was for a bad or evil purpose, or when the officer conscientiously acts or fails to act contrary to a known duty, he must be guilty of some conscious wrong or inexcusable carelessness or recklessness in the discharge or failure to discharge an official duty. Mere thoughtless acts, with no bad or evil purpose, in which there is no inexcusable carelessness or recklessness on the part of an officer, will not justify removal on the ground of habitual or willful neglect of duty." *Shields v. State,* 89 P.2d 756, at 760 (Okl. 1939).

Mr. Robison's method of bookkeeping can only be described as haphazard and of extremely poor quality. It is doubtful that Mr. Robison ever knew the exact financial condition of the F.F.A. Chapter.

However, there is no showing that Mr. Robison was guilty of a bad or evil purpose justifying discharge for willful neglect of duty. There was a showing that Mr. Robison's conduct was careless, but this can be somewhat excused when considered with the fact that the school administrative staff knew or should have known of his actions for four (4) years without taking any actions. Indeed, it is quite probable, that this matter would not have arisen if the school administrative staff had been less careless in the performance of their supervisory duties.

Rance Robison was not guilty of moral turpitude.

> "Moral turpitude broadly defined is any conduct contrary to justice, honesty and good morals. Moral turpitude implies something immoral in itself regardless of whether it is punishable by law. The doing of the act itself, and not its prohibition by statute determines the moral turpitude. The elements of intent and knowledge regarded as important, and if the wrong is unintentional or if the act is made improper by statute without regard to the mental element, it is not moral turpitude." *Kelly v. City of Tulsa,* 569 P.2d 455, at 457 (Okl. 1977).

No evidence was produced to put Mr. Robison's conduct within this definition. No misappropriation was shown and none was alleged. Only faulty management in violation of official school policy was shown.

While this may suggest dishonesty, it does not by itself give proof of dishonesty.

The final ground for discharge was incompetency. If Mr. Robison's handling of the F.F.A. account is demonstrative of his general teaching abilities, then Mr. Robison should be discharged for incompetency. The same would be true if there was evidence of misappropriation of or an attempt to conceal his activity.

However, since Mr. Robison was continually recommended for re-employment, it must be presumed that his general teaching ability was at least adequate with the exception of management of the F.F.A. account. No evidence was shown that Mr. Robison was otherwise deficient in his professional abilities during the years 1973-1977.

While improper management of the F.F.A. funds would certainly cause Mr. Robison's teaching abilities to become highly suspect, it is not by itself sufficient evidence to justify discharge on the grounds of incompetency.

ORDER

The Board of Education of the Wagoner School System is ordered to reinstate Rance Robison as vocational agriculture instructor and F.F.A. sponsor with full employment status and benefits.

CHAPTER 2

STATE OF OKLAHOMA

IN THE MATTER OF THE APPEAL OF CHARLES EVANS

-VS-

THE BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 89, OKLAHOMA COUNTY, OKLAHOMA

March 16, 1978
C. E. Wade, Jr., Hearing Judge

This hearing is rendered in connection with the matter of the appeal of Charles Evans from a ruling of the Board of Education of the Oklahoma City Public School System, Independent School District Number 89, pursuant to which Mr. Evans was notified that he was being dismissed as a teacher with that school system for commission of alleged acts of immorality and acts involving moral turpitude directed towards a female student. An appeal was timely made by the teacher from this decision, and on February 13, 1978, the undersigned was notified by the State Board of Education that he had been appointed as hearing judge and was to proceed with the hearing of this cause pursuant to the provisions of Title 70, Oklahoma Statutes (1977 Supp.) Sections 6-102.1, et seq.

As directed by such Sec. 6-103.6 this hearing was scheduled within ten (10) days after said date of February 13, 1978, and both legal counsel for the teacher and legal counsel for the Board of Education of Independent School District Number 89 were notified as to the date, time and place of said hearing. On March 8, 1978, said hearing was convened at the administration building of the Oklahoma City Public Schools, and upon the convening of the hearing it was announced and agreed to by all parties that neither party had chosen to designate a person, pursuant to Sec. 6-103.6, for the purpose of consulting with the hearing judge in his consideration of educational issues that might be involved in these proceedings, both parties specifically waiving in the record their statu-

tory right to do so. As a result, said hearing proceeded with the undersigned hearing judge sitting as the only member of the hearing panel.

The allegation which gave rise to this proceeding was that on November 8, 1977, shortly after the start of the 5th hour classes at Douglass High School in the City of Oklahoma City, Oklahoma, the tenured teacher, Charles Evans, improperly touched a female student, Darlene June Ellison, about the breasts, buttocks, by placing his hand between her legs, and by kissing her about the face and lips. Full and complete inquiry was made into these allegations, with the student, Darlene June Ellison, being the only witness called by the attorneys for the board of education in the process of putting on their case in chief. The teacher then presented testimony by Yolanda Knight, a student at Douglass who was working at the time as an aide for Mr. Evans during the 5th hour class period, Mr. Evans himself and then four character witnesses, namely Lieutenant Colonel Ted Wernick, Rosemarie Hayes, Mrs. Warren Hobson and Pearl Raymond. Rebuttal testimony was presented on behalf of the board of education by Dr. Jess Lindley, assistant superintendent for the Oklahoma City Public School System. These were the only witnesses heard at the hearing.

The statute requiring this written report further states that the report shall contain an outline of the scope of the hearing, findings of fact and conclusions of law and shall either direct that the teacher be reinstated or dismissed. Thorough consideration has been given to all the testimony heard, evidentiary matters introduced and arguments made by counsel, and I hereby find that by a preponderance of the evidence, Independent School District Number 89, Oklahoma City, Oklahoma, did establish the following facts:

1. That on the 8th day of November, 1977, Darlene June Ellison reported for her 4th hour math class to the classroom of Charles Evans, and was assigned to record answers out of an answer book onto other sheets of paper by reason of the fact that she brought no paper or pencil to class, and under these circumstances he normally did not permit a student to engage in normal instructional activities.

2. That shortly before the end of the class period he observed that Darlene had not completed the work that he requested her to do and that he, prior to consulting Darlene, wrote a note to Mrs. Crow, Darlene's 5th hour teacher and requested, "May I use Darlene Ellison 5th hour?" He then signed his initials to that note, and at that point asked Darlene if she was completed, to which question she responded that she still had a few yet to do, and then he asked if she would care to come back during the 5th hour and finish.

3. That Darlene then took the note to Mrs. Crow's classroom and after consulting with Mrs. Crow she was advised that she would not be excused to assist Mr. Evans, but would be required to come to her reading class, as she had a test to take that day. She then returned to Mr. Evans' classroom, and when she entered the classroom Mr. Evans was seated behind his desk. She walked up to the side of the desk and laid the

note back down on his desk, advising Mr. Evans that Mrs. Crow insisted that Darlene return to Mrs. Crow's classroom for her reading test.

4. That in response to that, Mr. Evans made some statement. It is alleged that his statement was, "Shit, that just tears me up," but the evidence is considered inconclusive as to the exact nature of any conversation between Darlene and Mr. Evans prior to the alleged acts of improper touching by Mr. Evans of Darlene's body.

5. That Mr. Evans then placed his hand upon the breast of Darlene; upon removing his hand from her breast he placed it upon her buttocks; and then after removing his hand from her buttocks he placed his hand between Darlene's legs and upon her genital area. Testimony was presented that some comment was made concerning certain portions of Darlene's body by Mr. Evans at this time, but the evidence is likewise considered inconclusive as to the nature of any such comments.

6. That after Mr. Evans placed his hand upon Darlene's buttocks she did move back and made some statement to Mr. Evans indicating that she did not care for what he was doing, and she advised him to cease such actions.

7. That upon Mr. Evans' hand being removed from between Darlene's legs, either voluntarily or by reason of Darlene continuing to move away from him, Darlene proceeded to pick up her belongings and exited the classroom.

8. That Yolanda Knight subsequently entered Mr. Evans' classroom, either right at or shortly after Darlene had left, but Yolanda's entrance was several minutes after 5th hour classes had started and more than ample opportunity existed for Mr. Evans to have done these acts after the start of 5th hour class prior to Yolanda's entrance.

9. That Mr. Evans had created the situation which provided the opportunity for this alleged incident to occur.

10. That testimony was presented that Mr. Evans had made some statement to Darlene prior to this incident about the possibility of the two of them having an affair, but the evidence is considered too inconclusive on this point, and I find that this alleged fact was not established by a preponderance of the evidence.

11. Several references were made to the fact that in the instant case the teacher is a black male and the student involved is a white female. No evidence at all of any prior animosity, disagreement or other difficulty between this particular teacher and Darlene June Ellison was introduced, nor, although an effort was made to make an issue of it, was there any evidence at all that Darlene June Ellison was disturbed by the fact that this was the first year she was being bused to Douglass. These matters were apparently inquired into in an effort to establish some reason why Darlene June Ellison would attempt to fabricate allegations such as those made against Mr. Evans. As a result, I specifically find that there was no evidence at all of any reason why Darlene June Ellison might have made up the story that she related at this hearing. When the testimony is taken and reviewed in its entirety it does seem most probable that the alleged improper touching by Charles Evans of the

body of Darlene June Ellison did in fact occur, and the evidence which tends to establish that these allegations are true is found to have more convincing force and the greater probability of being true than the evidence presented which would tend to indicate that the allegations are not true.

From the above facts, one has to conclude that the actions on the part of Charles Evans on November 8, 1977, were immoral in nature and were the type of unaccepted actions which do in fact involve moral turpitude. The dismissal of a teacher for "immorality" has been upheld in several recent cases, such as *Weissman v. Board of Education of Jefferson County School District*, 547 P.2d 1267 (Colo., 1976). I do conclude that Independent School District Number 89 of Oklahoma County, Oklahoma, has established sufficient cause in this case to dismiss Charles Evans for immorality and for conduct on his part which involved moral turpitude.

As a result, I direct that the decision of the Board of Education of Independent School District Number 89, Oklahoma County, Oklahoma, directing the dismissal of Charles Evans as a teacher in the Oklahoma City Public School System be sustained.

CHAPTER 3

STATE OF OKLAHOMA

IN THE MATTER OF THE APPEAL OF SHARON KAYE WHORTON

-VS-

THE FORT GIBSON BOARD OF EDUCATION OF FORT GIBSON, INDEPENDENT SCHOOL DISTRICT NO. 3 OF MUSKOGEE COUNTY, OKLAHOMA

April 10, 1978
Jim McClendon, Hearing Judge

DECISION

Insufficient evidence was presented to show by a preponderance of the evidence that Sharon Kay Whorton was guilty of an act involving moral turpitude.

FINDINGS OF FACT

Sharon Kaye Whorton was employed by Fort Gibson Schools for the past 10½ years as an elementary teacher.

On October 14, 1977, Sharon Kaye Whorton removed and took from Dillard's Department Store, Tulsa, Oklahoma, items of personal property which she had not paid for.

At the time said items of personal property were taken Sharon Kaye Whorton was suffering a temporal lobe seizure.

Because of the seizure, Sharon Kaye Whorton did not remove the personal property with the intent to deprive another thereof.

CONCLUSIONS OF LAW

Sharon Kaye Whorton was not guilty of an act involving moral

turpitude.

ORDER

The Board of Education of Fort Gibson School System is ordered to reinstate Sharon Kaye Whorton to the position she was dismissed from, with full employment benefits.

CHAPTER 4

STATE OF OKLAHOMA

IN THE MATTER OF THE APPEAL OF GERALD SERGEANT

-VS-

THE AFTON BOARD OF EDUCATION, AFTON, OKLAHOMA, INDEPENDENT SCHOOL DISTRICT NO. 26 OF OTTAWA COUNTY, OKLAHOMA

May 23, 1978
Robert B. Bird, Hearing Judge

DECISION

The hearing panel finds that the Afton Board of Education should reinstate the tenured teacher, Gerald Sergeant, with full employment status and benefits.

FINDINGS OF FACT

1. That Gerald Sergeant was a tenured teacher in that he had completed more than three years of consecutive school years of teaching service in the Afton Public School system under a written teaching contract.
2. That Gerald Sergeant was employed for the school year 1977-1978 with the Afton Board of Education with duties of history-social sciences teacher primarily, plus additional paid duties involving coaching and physical education.
3. That the school principal, Terry L. Dooley, recommended that Gerald Sergeant be rehired for the school year 1978-1979.
4. That the school superintendent, Jack Carinder, did not make a recommendation that Sergeant not be rehired for the school year 1978-1979.

5. That Gerald Sergeant was not rehired by the Afton Board of Education for the school year 1978-1979.

6. That Gerald Sergeant properly requested a hearing under the statutory procedures for non-reemployment of a teacher.

7. That Gerald Sergeant was given an excellent rating through a teacher evaluation conducted on October 27, 1977, by Terry L. Dooley, school principal, and that at no time prior to his non-reemployment was Gerald Sergeant informed of any problem with his teaching duties.

8. That Gerald Sergeant was not an incompetent coach by all testimony introduced, including that of Jack Carinder, school superintendent.

9. That Gerald Sergeant did not carry out a systematic plan to discredit the head basketball and football coach, Cecil Burdan, but in fact got along with Coach Burdan quite well, even to the extent that the school superintendent, Jack Carinder, himself observed no discord between the two men.

10. That Gerald Sergeant was placed in an untenable situation of being approached by the school superintendent, Jack Carinder, about being head basketball coach when Cecil Burdan had already been designated head basketball coach and that Gerald Sergeant responded as well as could be expected under the difficult circumstances within which he was placed.

11. That Gerald Sergeant did not take the required bus driving training under the requested policy of the board of education; however, none of the other coaches requested to do so received said training due to confusion as to whether they were still required to do so after a meeting held with the school superintendent, Jack Carinder, in October, 1977. Further, that there was no mention in Gerald Sergeant's contract of employment about bus driving duties.

12. That there is no evidence that Gerald Sergeant failed to properly lock and secure the buildings and in fact the teacher evaluation dated October 27, 1977 by Terry L. Dooley, stated that Gerald Sergeant took good care of the materials and equipment in his room. Further, there was no evidence that Gerald Sergeant was counseled with about this problem.

CONCLUSIONS OF LAW

1. That the Board of Education of Afton, Oklahoma, has not proved by a preponderance of the evidence that Gerald Sergeant is incompetent either as a teacher or as a coach within the provisions of 70 O.S. Section 6-103A.

2. That the Board of Education of Afton, Oklahoma, has not proved by a preponderance of the evidence that Gerald Sergeant was guilty of willful neglect of duty as a teacher and coach in the Afton School system under the provisions of 70 O.S. Section 6-103 A.

ORDER

1. The Afton Board of Education of Afton, Oklahoma, Independent School District No. 26 of Ottawa County, Oklahoma, is hereby ordered to reinstate the tenured teacher, Gerald Sergeant, with full employment status and benefits immediately.

CHAPTER 5

STATE OF OKLAHOMA

IN THE MATTER OF THE APPEAL OF DON MAUPIN

-VS-

THE AFTON BOARD OF EDUCATION OF AFTON, OKLAHOMA, INDEPENDENT SCHOOL DISTRICT NO. 26 OF OTTAWA COUNTY, OKLAHOMA

May 30, 1978
Charles L. Woodstock, Hearing Judge

ORDER

Now on this 18th day of May, 1978, the hearing requested by the tenured teacher, Donald Maupin, was conducted. The teacher and the superintendent of the Afton Schools appeared in person and were represented by Warner E. Lovell, Jr. and Coy Morrow, respectively. The hearing panel was composed of Carol L. Seitz on behalf of the teacher and Ed Hill appearing on behalf of the school superintendent, and the undersigned hearing judge. The hearing was convened and the hearing judge stated the purpose of the hearing and introduced the parties. Motions were presented and ruled upon. Opening statement was given by Coy Morrow for the Afton Board of Education and it was indicated that he would only call one witness, namely, Jack Carinder, superintendent. Opening statement was given by Warner E. Lovell, Jr. representing the teacher, Donald Maupin. Jack Carinder was sworn as the witness for the Afton Board and direct examination continued until his testimony was concluded and the hearing was adjourned for lunch. After lunch, Coy Morrow, the attorney for the Afton Board asked permission to reopen which was granted. Further direct examination was concluded. The hearing judge believing the Afton Board had presented all its evidence called a recess and discussed the evidence with the hearing

panel members.

FINDINGS OF FACT

The following is a summary of the evidence presented by the Afton Board in support of their decision to not renew the contract of the tenured teacher for "incompetence" and "gross neglect of duty."

1. The teacher failed to attend a vo-tech school to receive bus driving training so that he could drive to various sports events.

2. All coaches were instructed to lock the school building at night in the event they were there after the janitorial people left. On several occasions the superintendent found the school building open when he arrived in the morning.

3. Around the spring of 1976, the parents of Ruth Moss called concerning a letter they received from Donald Maupin which stated their daughter lacked motivation in sports.

4. Two or three years ago a Mary Sturgess called the school requesting that Donald Maupin's contract not be renewed.

5. The superintendent's daughter, while a sophomore (three to four years ago), was not mentioned at a sports honor banquet.

6. The superintendent's daughter, while a senior, did not receive the award for the "most outstanding female athlete of the year."

7. Miscellaneous complaints were received by the superintendent during the years 1974-1977.

8. In 1976, five or six complaints were received concerning a test Donald Maupin had given.

9. There was a dispute between the Allison/Barger families during the 1976 track season.

10. Donald Maupin used the gym for track practice during the 1977-1978 season when weather was prohibitive and scatched the gym floor with the hurdles.

The town of Afton is approximately 1,200 and is a typical small town with the usual small town population.

The superintendent does not feel Donald Maupin is an incompetent classroom teacher.

CONCLUSIONS OF LAW

The hearing judge and the hearing panel members, feeling that the board of education had presented all their evidence, unanimously concluded that there was no evidence to show that Donald Maupin was incompetent or that he had grossly neglected any duties, and ordered his reinstatement.

CHAPTER 6

STATE OF OKLAHOMA

GLADYS LANGSTON

-VS-

WYNNEWOOD BOARD OF EDUCATION

June 9, 1978
Stephen D. Colbert, Hearing Judge

DECISION

It is the unanimous decision of the hearing panel, consisting of Tawana Jones, Lela Shackelford and Stephen D. Colbert that the Wynnewood Board of Education reinstate Gladys Langston, a tenured teacher, with full employment status and benefits.

FINDINGS OF FACT

It is the finding of the hearing panel that Gladys Langston is and was a tenured teacher for the Wynnewood Board of Education. The panel finds that a written policy of evaluation was established by the Wynnewood Board of Education subsequent to consultation or involvement selected by local teachers and administrators, selected by the Wynnewood Board of Education in accordance with Senate Bill 249, Section 2. The hearing panel finds that these written policies were prescribed in writing at the time of adoption. The hearing panel further finds that Gladys Langston was under the supervision of Jim Coffey, administrator for the Wynnewood Board of Education.

The panel further finds that Mrs. Langston was one of five or six tenured teachers working under the supervision of Jim Coffey, and that she was the only tenured teacher to be evaluated in the 1977-1978 school year. The panel further finds that on November 9, 1977, a written evaluation was made and responses thereto entered on the evaluation and maintained in the personnel file of Gladys Langston.

It is the opinion of the Hearing Panel that there was nothing in plaintiff's Exhibit Number 11, the Written Policy of Evaluation, dated November 9, 1977, which indicates that Gladys Langston was willfully

neglecting any duty she might have had as an employee of the Wynnewood Board of Education.

There is discussion of the full use of time, but this discussion bears only on her competency to use her time in the best interest of the children. The hearing panel finds that Jim Coffey, administrator for the Wynnewood Board of Education, admonished Gladys Langston, by bringing to her attention the written evaluation of November 9, 1977, and that Mr. Coffey made no reasonable effort to assist Gladys Langston or correct whatever appeared to be the cause for her potential non-reemployment.

The Panel finds that Mr. Coffey did nothing other than submit a critical evaluation of this teacher. The panel further finds that Mr. Coffey failed to advise Mrs. Langston that she would have two months in which to improve, failed to make another evaluation within the two month period, prescribed by law in Senate Bill 249, Section 6, and thereafter on February 15-16, 1978, some three months and six days later made another evaluation which again reflected problems with Mrs. Langston's ability and competency to be able to handle the children.

Mr. Coffey concluded by making the statement that Mrs. Langston was not following a time schedule as set forth in the 1977-1978 Kindergarten Pamphlet which was introduced into evidence herein, and that she was not planning or implementing teacher's activities in each of the subjects in the Teacher's Handbook. It is the finding of this panel that Mrs. Langston did follow the time schedule as set forth in the 1977-1978 Kindergarten Pamphlet to the best of her ability, and the evidence overwhelmingly shows that Gladys Langston implements teaching activities for each of the subjects in her job description and that she fully educates and prepares kindergarten children for the first grade.

The panel makes this finding based on the fact that Mrs. Langston is a kindergarten teacher, that kindergarten children are five and six years of age and that they are away from their mother and/or father for the first time and are generally hard to control and manage. The evidence presented by many parents of the children in Mrs. Langston's class, especially the testimony of Patsy Jones who presented materials which had been presented to her child in Mrs. Langston's class this year as instructional materials, clearly shows that Mrs. Langston taught all the materials that were listed in her job description and in fact did an excellent job.

The panel further finds that Mrs. Langston was not advised of the dates of any type of schedule for evaluation visits by Mr. Coffey. The panel finds that Mr. Coffey did not ask Mrs. Langston for any self-evaluation reports or any self-evaluation progress reports after the November 9, 1977, evaluation.

The Court finds that the kindergarten teacher, Gladys Langston, requested a teacher's aide, that it would be in the best interest of the children of the Wynnewood Board of Education, for Mrs. Langston who was attempting to teach between 23 and 27 children at one time, to be

given an aide, that *no consideration was given to Mrs. Langston's* request by Mr. Coffey on her request. The court finds that thereafter, on March 30, 1978, Mr. Hoyle Sharber, superintendent of Wynnewood Public Schools, submitted a recommendation in writing to the Wynnewood Board of Education for the non-reemployment of Gladys Langston. The hearing panel finds that this letter of recommendation was sufficient to apprise the Wynnewood Board of Education of the statutory ground listed in 70 O.S. Section 6-103, of Willful Neglect of Duty. The panel finds tht the letter recited only the words "Neglect of Duty", but that this is sufficient as to the Wynnewood Board of Education to make a finding of willful neglect of duty. The panel further finds that Mr. Sharber submitted a recommendation of non-reemployment, the evaluation dated November 9, 1977, and the evaluation dated February 15 and 16, 1978, to the Wynnewood Board of Education.

The testimony further showed that neither Mr. Sharber nor Mr. Coffey presented any other evidence to the Wynnewood Board of Education. The board of education made a decision based upon the evaluations and recommendations made by the Superintendent, Hoyle Sharber, not to re-employ Mrs. Langston. Thereafter, Hoyle Sharber, superintendent of Wynnewood Public Schools, acting for the Wynnewood Board of Education, caused written notice of the non-reemployment to be mailed by certified mail, Restricted — Delivery With Return Receipt Requested, to Gladys Langston.

The evidence shows the notice was sent and received by Mrs. Langston on April 4, 1977. The evidence does not show whether or not the tenured teacher notified the clerk of the local board of education within the ten day period of time of her desire to have a hearing on her non-reemployment and it is the conclusion of the hearing panel that the proper notice was given, no objection having been made.

The hearing judge was notified on April 26, 1978, of his selection and a hearing on this case was set for 1:30 p.m., May 4, 1978, at Wynnewtod, Oklahoma, with the selected hearing panel, Tawana Jones and Lela Shackelford. Tawana Jones was designated by the Wynnewood Board of Education and Lela Shackelford was designated by the tenured teacher. The panel finds that all procedural due process rights have been afforded to both the Wynnewood Board of Education and to the teacher, Gladys Langston, in this case.

CONCLUSIONS OF LAW

The hearing judge, after hearing the evidence and considering the law in this case finds that:

1. The Wynnewood Board of Education was in substantial compliance with the laws of the State of Oklahoma, and followed the procedure required by law to dismiss or nonrenew a teacher's contract.

2. The magistrate, for reasons hereinafter disclosed, is not making a ruling on the demurrer to the school district's evidence. However, the only evidence presented to the board of education, being the recom-

mendation of Mr. Sharber for Mrs. Langston's non-reemployment and the written evaluations are probably not sufficient under the laws to constitute a dismissal for willful neglect of duty.

3. The magistrate finds that the Wynnewood Board of Education complied with the requirements for the establishment of a written policy of evaluation.

4. The magistrate concludes that the law requires that an equitable application of evaluation criteria would be applied to all personnel. It is obvious in this case, Mrs. Langston being the only tenured teacher of five or six teachers in the school to be evaluated, that equitable application of the evaluation criteria was not applied to all personnel.

5. The magistrate finds, as a matter of law, that the law requires an administrator to chart or map a reasonable time for improvement, which time shall not exceed two months. The court finds, that as a matter of law, there was no notice to the teacher when she would be evaluated or when improvements would have to be made, the evaluations by the administrator were more than three months apart, hence did not comply with the statutory requirement for evaluations.

6. The magistrate finds, as a matter of law, the number one reason for Senate Bill 249 and the Procedural Due Process Law for non-reemployment of teachers in the State of Oklahoma is to improve the quality of teaching. The court finds that none of the evaluation procedures used by the administrator in this case were designed to improve the quality of teaching by Mrs. Langston or any other teacher in the Wynnewood Public School.

7. The magistrate finds, as a matter of law, that the procedural due process under the law have been met in this case.

8. The Court further finds, as a matter of law, that the evidence overwhelmingly showed that Gladys Langston was not reemployed for willful neglect of duty. To the contrary, the evidence overwhelmingly showed that Gladys Langston attempted to adhere to the guidelines requested by her administrators, performed her functions to the best of her ability and furthermore is a credit to her profession.

CHAPTER 7

STATE OF OKLAHOMA

LENA LIGGINS

-VS-

BEGGS BOARD OF EDUCATION INDEPENDENT SCHOOL DISTRICT #4

July 7, 1978
Philip B. Sears, Hearing Judge

DECISION

An action by Lena Liggins against the Beggs Board of Education (Independent School District #4). From a decision by the school board not to renew her teaching contract on the grounds of willful neglect of duty, the appellant seeks reinstatement as a teacher at the Beggs Elementary School.

Reversed.

Before Philip B. Sears, Hearing Judge, Fred J. Caudle, panel member, and Robert L. Jackson, panel member.

Goodwin & Goodwin, Gordon D. McAllister, Jr., Tulsa, for appellant.

James E. Ryan, Okmulgee, for appellee.

Sears, hearing judge.

On August 1, 1977, Beggs School District No. I-4 (Beggs Board of Education) of Okmulgee County, Oklahoma, hereinafter referred to as the appellee, made and entered into a written employment contract with Lena M. Liggins, hereinafter referred to as the appellant, to teach school during and throughout the school year 1977-78, at a salary of $851.00 per calendar month for twelve calendar months, total salary $10,212.00. Appellant, a tenured teacher within the district, had likewise been employed by the appellee for the preceding six years as a teacher at Beggs Elementary School.

At the beginning of the 1977-78 school year, appellant was placed on an extra-curricular duty roster for work at a concession stand during an evening high school football game on September 30, 1977. The obligation was made known to the appellant prior to September 30, 1977.

Although appellant had been assigned to such obligations during her prior six years of employment, she had never attended them. No remedial actions had been taken by the appellee against the appellant for her failure to attend those assignments.

Appellant admitted knowledge of the assignment of September 30,1977, and admitted that she willfully neglected to perform her assignment, stating her belief that said assignments were beyond the scope of her employment contract.

On November 10, 1977, an evaluation of appellant was made and the appellant was counselled by her principal, Lloyd Adams. Although not subsequently assigned extra-curricular duty, the appellant manifested her intent not to perform such duty if assigned. On December 5, 1977, appellant appeared before appellee's monthly meeting and refused to perform such duties if assigned. In April, 1978, appellee met with Mr. Adams and the superintendent and again stated that if assigned such extra-curricular duty, she would refuse to perform it.

On April 4, 1978, the superintendent of Beggs Public Schools recommended to the appellee that appellant's contract not be renewed based upon willful neglect of duty. Also on April 4, 1978, the appellee voted not to renew appellant's contract based upon willful neglect of duty and appellant was notified of the adverse decision. This appeal was perfected pursuant to Title 70, Oklahoma Statutes Sections 6-103.4 through 6-103.14. At the time of the hearing, both parties entered into written stipulations waiving objections to jurisdiction, and venue, and acknowledging the perfection of all due process requirements as established by statute.

The question of the appellant's competency as an elementary school teacher is not at issue. Testimony from all quarters clearly established the appellant's excellence as a teacher and her dedication to the children entrusted to her care. Nor, as appellant contends, is this strictly a question of estoppel and waiver based on previous acts and conduct by the appellee in its dealings with the appellant. Rather the question here is whether the appellant could be required to perform such an extra curricular duty in the absence of a stipulation to that effect in the contract.

Appellee contends that the authority to assign a teacher to a duty (football concession stand work) is incidental to the performance of her employment with the appellee and is implied under the contract. The appellant contends that her teaching contract with the appellee does not require her to perform such an extra-curricular activity and bases her position on the premise that her teaching contract with the appellee is subject to the same rules of contract law as any type of contract.

We hold that the general relationship between the Beggs Board of Education and its teacher is created by contract and is governed by general principals of contract law. Mrs. Liggins was employed as a teacher. By implication, and absent express language to the contrary, she was employed as an elementary school teacher. Essential to the formation is mutual consent. Under Oklahoma law consent is not

mutual unless the parties all agree upon the same thing in the same sense; further, a contract must be interpreted as to give effect to the mutual intent of the parties, as it existed at the time of contracting, so far as the same is ascertainable and lawful. Title 15 Oklahoma Statutes Sections 66 and 152. While the opinion of the Attorney General, 378, (1976), must be viewed as persuasive authority in limiting grounds for the dismissal of a teacher to acts or incidents occurring during the present employment and contractual year, it was not intended to serve as a guide for the interpretation of duties imposed by contract between a Board and a teacher.

While it may be reasonably implied that both parties herein mutually consented to the performance by Mrs. Liggins of such reasonably curriculum related duties as lunch room monitoring, grading, school bus loading, parent-teacher relations, and field trip attendance, we find that in the absence of a stipulation to the contrary in the contract, such a non-curriculum related duty cannot be implied, and Mrs. Liggins cannot be required to perform the extra-curriculum duty of working a food concession stand at any location, let alone at a school within which she performs no teaching duties whatsoever.

The absence of even the potential for mutual consent as to such an extra-curricular activity is manifested by six years of prior contractual relations between the parties during which Mrs. Liggins did not attend one extra-curricular concession stand "duty" and during which time no reprimands occurred.

When competent and qualified parties are reducing their contract to writing, there is no reason why they should not be required to incorporate requirements for such a non-teaching related activity as food concession sales-person if the teacher is expected to perform such duties or face the loss of employment, which for a tenured teacher we hold to be a vested right. See also *School District No. 25 of Blaine County v. Bear,* 233 P.2d 427 (1925).

No application of this decision is intended to have controlling effect on teachers other than Mrs. Liggins. In her case we find no expressed contractual duty, nor reasonable implication thereof, to perform the "duty" which was the basis for the board's decision not to renew her contract. There being no duty, there can be no breach or neglect of duty, whether such neglect is willful or otherwise.

ORDER

It is therefore ordered that Mrs. Lena Liggins be reinstated to her position as an elementary school teacher by the Beggs Board of Education, Independent School District 4.

CHAPTER 8

STATE OF OKLAHOMA

INDEPENDENT SCHOOL DISTRICT NO. 8 OF TULSA COUNTY, OKLAHOMA, AT SPERRY, OKLAHOMA

-VS-

OPAL WALKER

July 7, 1978
Jesse D. Swift, Hearing Judge

WRITTEN REPORT OF DECISION

1. On the 15th day of June, 1978, the appeal of Opal Walker from the decision of the Board of Education of Independent School District No. 8. of Tulsa County, Oklahoma, was convened at 9:30 a.m. at the Tulsa County Court House in the City of Tulsa as specified in the Notice of Hearing dated June 3, 1978. The appealing tenured teacher, Opal Walker, was present in person and represented by Thomas Thornbrugh, Esq. of Tulsa, and by Joe R. Kennedy, Esq. of Muskogee, and the Sperry School District was present by Dr. Jack C. Fenimore, superintendent, and represented by Joseph Best, Esq. of Sperry.

2. It was announced that the purpose of this proceeding was to hear the appeal of Opal Walker (hereafter referred to as Walker or teacher) from the decision of the Board of Education of Independent School District No. 8 of Tulsa County, Oklahoma (hereafter referred to as district or Sperry) in voting to not renew the written contract of employment of Walker, a tenured teacher, for the year 1978-1979, on the statutory ground of "incompetency." The hearing panel members were duly introduced as follows:

Hearing Judge	Jesse D. Swift, Attorney of Sand Springs
Panel Member (by teacher)	Harold Hendrex, for Sperry, and
Panel Member (by district)	James Newman, of Skiatook.

3. Also introduced for the record were Dr. Jack C. Fenimore,

superintendent of schools of Sperry and his attorney, Joseph Best, together with Opal Walker, a tenured teacher, and her attorneys, Thomas Thornbrugh and Joe R. Kennedy. The hearing judge announced that the procedures set forth in 70 O.S. Sec. 103.5 through 103.13 shall apply as specified in the Notice of Hearing dated June 3, 1978, and that the rules of evidence would follow substantially those of the Administrative Procedures Act of Oklahoma in 75 O.S. Sections 301 et seq., which would also supplement the procedures prescribed in the school code.

4. Thereupon, Joseph Best presented the opening statement on behalf of the District and Thomas Thornbrugh presented the opening statement on behalf of Walker. The rule of sequestration of witnesses was invoked and all witnesses who were subpoenaed or expected to testify were duly sworn and instructed to remain outside the hearing room except when called to testify and further to refrain from discussions concerning their testimony with anyone other than the attorneys in the cause until excused. Appellant, Opal Walker, and Supt. Jack Fenimore were excused from the rule as necessary parties to the hearing.

5. Counsel for Walker requested a ruling on the question of whether or not the panel members would each exercise a "vote" on the decision. Ruling thereon was reserved until a review of any legal authorities available were examined, but panel members were directed by the Hearing Judge to give attention and make such notes as each deemed necessary to cast his "vote" at such time as the question was ruled upon and a "vote" called for.

6. Both parties stipulated to the proper identification of copies of various documents and thereupon several exhibits were introduced into evidence upon such stipulation and identified as follows:

Dist. Ex. No. 1 -	Policy of Teacher Evaluation adopted by Sperry on October 10, 1977.
Dist. Ex. No. 2 -	Teacher Evaluation of Walker dated Jan. 11, 1978, with Teacher Response attached.
Dist. Ex. No. 3 -	Teacher Evaluation of Walker dated Mar. 10, 1978, with Teacher Response attached.
Dist. Ex. No. 4 -	Walker teaching contract for 1975-76.
Dist. Ex. No. 5 -	Walker teaching contract for 1976-77.
Dist. Ex. No. 6 -	Walker teaching contract for 1977-78.
Dist. Ex. No. 7 -	List of Sperry superintendent, principals, school board members names and positions.
Dist. Ex. No. 8 -	Notice of Nonrenewal to Walker of April 7, 1978.
Dist. Ex. No. 9 -	Receipt for mailing and return receipt by Walker dated April 10, 1978.
Dist. Ex. No. 10 -	Request for hearing to State Board of Education.
Dist. Ex. No. 11 -	Minutes of school board meeting convened on

March 30, 1978, and reconvened on April 7, 1978.

Dist. Ex. No. 12 - Standard Oklahoma Certificate of Walker.

Dist. Ex. No. 13 - Superintendent's Request for Non-renewal of the Walker contract for 1978-79.

Dist. Ex. No. 14- Teacher Evaluation for Oct. 27, 1976; Mar. 14, 1977, and Jan. 19, 1977. (prior school year). 6 sheets.

7. Various definitions of "incompetency" were urged by various counsel and panel members. These included one taken from a law report in 116 So.2d 566, and one from an unidentified edition of Webster's Unabridged Dictionary. There was no definition offered from the Oklahoma Legislature or Supreme Court.

8. Witnesses were called to testify and exhibits introduced into evidence by District, after which counsel for Walker, interposed a Demurrer to the evidence. This Demurrer was overruled. Witnesses were called to testify and exhibits offered into evidence by Walker who then rested. Rebuttal witnesses and evidence were presented by both parties and the arguments of counsel were presented by each party, whereupon the hearing panel retired for deliberations at approximately 2:00 p.m. on June 16, 1978 (the second day of hearing). After deliberations, the hearing panel reconvened in open session with all parties present and represented with counsel.

9. The hearing judge announced the ruling on the question of who would "vote" on the decision to be that the judge alone would make the decision. He further announced that the definition of "incompetency" is spelled out in neither the legislation nor court decisions of Oklahoma so far as could be ascertained and that its usual grammatical sense as used in the educational context would apply.

10. The hearing judge announced the decision to be that the decision of the Board of Education of the district for the non-reemployment of Walker be sustained.

FINDINGS OF FACT

11. In reaching this decision the hearing judge makes the following findings of facts and conclusions.

12. "Incompetency" as used in 70 O.S. Sec. 6-103A is found to mean the inability or the failure to perform the job or task at the level of degree of performance set by and expected by the employer. An alternate way of stating this is failure to perform one or more of the essential parts of the job requirements, or failure to perform one or more necessary or imperative criteria without which the performance is inadequate or is unacceptable. Incompetent employment performance is that kind of performance which is in some essential part below the level, degree or standard of performance established and expected by the employer.

13. The hearing judge has no legislative history which reveals any specific intent of the Legislature in the definition of "incompetency"

except its prior use in the former section 6-103, and sections 6-120 and 6-122, now repealed. The Hearing Judge finds that the word was used in its normal grammatical sense within the context of education and *does not* have the limited meaning or definition usually associated with "mental illness or mental incompetency."

14. Opal Walker is a mature adult female teacher who was a duly tenured teacher in the Sperry School system on March 30, 1978, and at all times material to this proceeding within the meaning of that term in the Oklahoma School Code, and that she was employed under a written contract of employment as an elementary teacher in the district. She was duly certificated by the State Department of Education (Dist. Ex. No. 2) and (Dist. Ex. No. 6). She has taught in the Sperry system for 11 years.

15. A system of teacher evaluation was duly adopted and in effect in the district during the calendar year 1978, having been adopted on Oct. 10, 1977 (Dist. Ex. No. 1). The policy of evaluation was totally consistent with the requirements of the statutes of Oklahoma applicable thereto and included quotations from such statutes as part of the exhibits or schedules in the evaluation policy.

16. An evaluation of Walker during January 1978 (Dist. Ex. No. 2) revealed various items of criticism of Walker by Mr. Jantz, the elementary principal who was the proper administrator to make such evaluation under the teacher evaluation policy at Sperry. This evaluation included the note that student discipline needed improvement. A later evaluation of Walker was made by Mr. Jantz on March 10, 1978 (Dist. Ex. No. 3) but was not put into writing and submitted to Walker for acknowledgement until March 21, 1978, at which time Walker did acknowledge receipt of a copy of the evaluation of March 10th and indicated her desire to respond and object to the content of such evaluation as prescribed by the policy. She did respond by written comments dated March 21, 1978, and attached to Dis. Ex. No. 3. A plan of improvement was discussed as this last evaluation indicated that the "student discipline" problem might be grounds for contract jeopardy. A plan of improvement acknowledged by both Walker and Mr. Jantz was reached on March 28, 1978 (Dist. Ex. No. 9). Only 13 days were available for improvement (and possible re-evaluation) before the deadline date at which time contract renewal decisions must be made by the district. In fact, only two days later, (March 30, 1978) Supt. Fenimore made a written recommendation to the district board that Walker not be reemployed for the year 1978-1979 (Dist. Ex. No. 13).

17. The district board met on March 30, 1978, but took no action on this recommendation concerning Walker and there is no evidence that this recommendation was even considered by the Board on this date. This board meeting was adjourned until April 7, 1978, at which time it was reconvened, and at which time the district voted unanimously to accept the recommendation of the superintendent not to renew the employment of Walker on the grounds of "incompetency" (Dist. Ex. No. 11). Written notice of the board's decision was sent by certified mail on

April 10, 1978, and was received by Walker on April 10, 1978 (Dist. Ex. No. 9).

18. Request for hearing was issued to the State Board of Education (Dist. Ex. No. 10) bearing date of April 21, 1978, requesting appointment of a list of 21 prospective names for a hearing judge. Selection of the hearing judge progressed and on May 25, 1978, the undersigned hearing judge was notified by telephone of his selection, and this was confirmed by letter from the State Department of Education mailed May 26, 1978, which was duly received by mail.

19. Several other teachers employed in the same elementary school of the district testified and established that each had classroom teaching experience and each had ample opportunity to observe some proceedings in the Walker classroom during the 1977-78 school year and had formed definite opinions concerning Walker's competency based upon the experience of each and upon the observations of each in or into the Walker classroom. Each had formed and did express the opinion that Walker was incompetent. Most based their decision on student discipline problems or observed lack of student discipline in the classroom and some related their decision to teaching methods and materials. Each was definite in his expression and claimed no direct personal bias.

20. Mr. Jantz was the administrative person duly designated to make a teacher evaluation of Walker and he possessed 27 years of classroom experience. He has been employed in Sperry only the past three years, but has known Walker for that period of time and has had ample opportunity to observe her conduct in the classroom and the conduct of her students, both in and out of the classroom. Mr. Jantz confirmed in testimony what he reported in the evaluations of Walker. His criticism of Walker with respect to her failure to provide a certain student deficiency reports to the Office was not supported by the express terms of the School Policy Manual. His criticism of Walker with respect to lack of student discipline was supported by the observations of other teachers, school patrons, and a recent history of discipline shortcomings as revealed in the 1977 evaluations (Dist. Ex. No. 14) as well as the general consensus of all teachers and patrons that Section C students provided more discipline problems than the students in Section A or B.

21. Some patrons expressed their opinions concerning the competency of Walker with respect to student discipline matters, both pro and con. Some expressed a belief that their children would be at a disadvantage in the Walker classroom and others expressed the belief that Walker classroom discipline was normal and completely acceptable to these parents. One parent testified that he was so concerned about the progress of his child that he requested and insisted in a transfer of his child from "Section C" into another section to remove this child from the discipline problems he felt evidenced in the Walker classroom. Regardless of the correctness or substance of this patron's concern, it was a firm and deep seated belief and was convincing that some type of student discipline problem actually existing in the Walker classroom.

22. Several other teachers employed in this district and working in the same elementary school, even the adjoining classroom to Walker, expressed opinions that Walker was indeed a competent teacher and that the discipline problems which they observed were common among the Section C students and that there were no special problems in the Walker classroom. These teachers had comparable classroom experience and comparable opportunity to observe the Walker classroom as those teachers expressing the opposite opinion.

23. I cannot find that the discipline problems of the students of Section C were the sole creation of Walker, as there was evidence of discipline problems in this group of students in prior years, however, it is my finding that her lack of adequate student discipline could be a material contribution to such problem. The suggestion that the administration may have "loaded up" Section C with the students having discipline problems was not supported by the evidence as there was no probative testimony on this hypothesis.

24. Opal Walker possessed the proper legal credentials for an elementary teacher of social studies and science; she held appropriate college degrees and state certificate; she had more than ample experience in classroom service (11 years); she had consistently made use of summer adjournment to enroll and participate successfully in college summer courses to maintain her level of academic knowledge and to keep it current; and, as well, she was able to attempt new and innovative teaching methods or techniques within her elementary classes. Her dedication to work was probably not excelled in the Sperry system as she always arrives at work early and promptly. She neither wasted time in unnecessary idleness at the teacher's lounge nor exhibited any tendency toward use of sick leave or excuses to avoid work. Opal Walker tried hard, that is she exerted much effort and diligence in areas of greatest abilities endeavoring to compensate for her shortcomings in the weak areas. It was not enough. In spite of her extra effort to excel in other facets of teaching, the administrators who most needed to be impressed or enlightened were unable to overlook the student discipline cross. There is no evidence that Walker was unwilling or unable to perform her assigned work, except with respect to the question of imposing and maintaining the level of student discipline in the classroom required by the district.

CONCLUSIONS

25. There was strong conflict in the testimony and evidence on the question of Walker's student discipline upon which reasonable minds might differ and there is adequate credible evidence having probative value on which to sustain the recommendation of the Superintendent to the district and to sustain the decision of the Board of the district in finding that Walker was incompetent by reason of her inability to maintain or instill the level of student discipline in her classroom

desired by the administration officers who are charged with the duty of implementing and carrying out such policy of the district.

26. The most convincing evidence having probative value convinces the Hearing Judge that Opal Walker does not agree with the administration as to the level or degree of student discipline necessary at Sperry Elementary School and cannot command or demand of the students that level or degree required by the administration.

27. The hearing judge is further convinced that, although reasonable minds might well differ on the appropriate level of student discipline required and expected in the system and might further differ on the manner in which such discipline must be maintained, it is the primary duty of the administration to determine that level of discipline required and expected in the system and it is the duty of the teacher to comply therewith. I further conclude that failure of a teacher to maintain that level of student discipline is an inadequate performance and, hence, an element of "incompetency" of sufficient magnitude to support the determination of the administration and the decision of the Board of Education not to renew the contract of a tenured teacher.

28. The hearing judge is further convinced that the gravity of this situation was brought to the direct and clear attention of the teacher very late in the season and that the amount of time in which to direct and expect corrective action by Walker was extremely short. Even so, I conclude that the board of education acted in good faith and did in fact rely upon the evaluation and recommendation of their administrators in reaching the decision not to renew this contract of employment and in so doing I find the evaluation of the principal is supported by the evidence having the most probative value and that the recommendation of the Superintendent is supported by the same probative evidence and therefore the decision of the district is supported by the preponderance of the evidence and should therefore be sustained.

29. The hearing judge further concludes that a far greater injustice of immeasurable dimensions could result from inadequate student discipline than the measurable justice resulting from a disputed contract termination or non-renewal based upon opposing definitions of "incompetency", or based upon sharply conflicting evidence of "incompetency."

30. It is further concluded that the statutory grounds for teacher terminations and non-renewals should have a more clear-cut legislative definition, at least with respect to the term "incompetency" (though not limited to this ground) and that the statutory formula for prescribing and implementing a plan of improvement be more fully described or detailed.

31. It is further concluded that the statute prescribing that the hearing panel members shall advise the hearing judge on educational issues is intended to mean just that, and, that the hearing panel members do not, therefore, have any "vote" on the ultimate decision which

must fall fully upon the shoulders of the Hearing Judge.

32. It is my final conclusion that the decision of the District not to renew the contract of employment of Walker for the year 1978-1979 is supported by the preponderance of the evidence and the law and that it should be and is hereby sustained.

CHAPTER 9

STATE OF OKLAHOMA

IN THE MATTER OF THE APPEAL OF RAY THOMPSON

-VS-

THE BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 89 OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

September 5, 1978
Jim K. Goodman, Hearing Judge

SCOPE OF THE HEARING AND PRELIMINARY PROCEDURAL MATTERS

The purpose of this hearing is to determine whether to sustain or reverse the decision of The Board of Education of Oklahoma City, Independent School District No. 89 of Oklahoma County, Oklahoma ("The Board"), on April 10, 1978, to approve the recommendation of the superintendent of schools that Mr. Ray Thompson ("Thompson") be suspended and terminated from his position of employment as principal of Capitol Hill High School on the statutory grounds of immorality and offenses of moral turpitude.

At an informal conference on June 15, 1978, it was stipulated by the board that it would waive the appointment of a person to counsel and assist the hearing judge in his decision, since the consideration of technical educational issues was not involved. By letter dated June 22, 1978, Thompson also waived any right he had to appoint such a person pursuant to 70 O.S. 1977 Supp. Sec. 6-103.6.c. The factual and legal issues herein were submitted to this hearing judge alone.

On June 16, 1978, notice was issued to Thompson and the Board that the hearing in connection with this appeal was set for July 5, 1978. A joint application and stipulation for continuance was filed by Thompson and the Board, requesting that the hearing be rescheduled for July 17,

1978. The application was granted and, pursuant to notice issued by letter dated June 30, 1978, the hearing was set to commence on July 17, 1978 at 8:30 A.M. in the courtroom of the Honorable Homer Smith, district judge, District Court of Oklahoma County.

In light of the continuance, it was agreed the hearing judge would have ten (10) days after the conclusion of the hearing to render his written report, with provision for an additional fifteen (15) days, if Thompson and the Board agreed. Such agreement was also orally acknowledged by counsel for Thompson and the Board at the closing arguments held in this hearing on August 23, 1978.

A pre-hearing conference was held herein on July 7, 1978. Prior to the hearing, in excess of fifty (50) motions, briefs, objections, responses, notices and other pleadings were filed by the parties and considered and ruled on by the Court. In excess of sixty (60) witnesses were subpoenaed to the hearing by the parties.

The hearing commenced on July 17, 1978, and continued for five (5) full days, through July 21, 1978. At the close of the evidence presented by Thompson and the board, it was agreed that the hearing would be recessed until after the written transcript has been prepared, in order to permit both counsel to adequately prepare their closing arguments. It was further agreed that the hearing judge would set the closing arguments at a mutually agreeable time within a week to ten (10) days after receipt of the written transcript. The transcript was received by the hearing judge on or about August 14, 1978. Pursuant to notice issued by letter on August 16, 1978, closing arguments were set for Wednesday, 23, 1978 at 2:00 p.m. Closing arguments were presented on that date and the hearing was adjourned to await this written report.

FINDINGS OF FACT

Having considered the exhibits introduced into evidence, the testimony of witnesses sworn and examined, and all other evidence introduced during the hearing, as well as the arguments of counsel, the hearing judge makes the following findings of fact:

1. On or about April 10, 1978, the Board of Education of Oklahoma City, Independent School District No. 89 of Oklahoma County, Oklahoma, approved the recommendation of its Superintendent that Ray Thompson, at that time principal of Capitol Hill High School, Oklahoma City, Oklahoma, be suspended and terminated on the grounds of immorality and offenses involving moral turpitude. Thompson received written notice of the board's action as required by law. Thompson responded within the period prescribed by law, requesting a hearing, as provided by 70 O.S. 1977 Supp. Sec. 6-103.4. There is no issue before this Hearing Judge as to the sufficiency or adequacy of those notices.

2. On October 11, 1977, Linda Everhart ("Everhart") was a student at Capitol Hill High School and Thompson was principal. Everhart had been out of school for approximately two (2) weeks. She met with Thompson to have her name removed from the DNA ("do not admit")

list. After a conversation with Everhart in his office, Thompson agreed to go with her to speak with Ms. Karen Elias, her distributive education teacher. On the way to Ms. Elias's room, Thompson stopped outside a storeroom known as Room 126, unlocked the door, entered and invited Everhart to follow him in. Once inside, Thompson asked if she could see what was in his eyes. Thompson said that he could see the same thing in her eyes and further stated, "I know you want me just like I want you." Everhart backed away and sat down on a table. Thompson approached her and rubbed his erect penis against her knee and asked her if she could feel it. He asked her to take hold of it. Everhart refused and tried to leave the room. Thompson advised her she would be foolish to report it to anyone, because no one would take her word against his. Everhart later advised a teacher, Derrald Miller, of the incident. He suggested that she report it to the board of education, but she did not do so. A week or two later, Everhart told her father of the incident. He ultimately reported it to the board of education. This complaint prompted the initial investigation that resulted in the board's decision to terminate Thompson.

3. In early November, 1973, Thompson arrived uninvited at the apartment of Ms. Jane Dickey ("Dickey"). Dickey was single and a teacher at Capitol Hill High School, where Thompson was an assistant principal. Dickey invited Thompson in and fixed him a drink. After a few minutes, Thompson made unsolicited sexual advances toward Dickey. Thompson held Dickey down while attempting to kiss her and pulling at her dress. Dickey resisted and Thompson eventually stopped. Thompson then left at the request of Dickey. This incident seriously affected the principal/teacher relationship that had previously existed. While Dickey had called on Thompson for assistance on several occasions prior to that time, she never did so thereafter.

4. During the 1972-1973 school year, Ms. E.B. Grove ("Grove") was employed as a teacher at Northwest Classen High School, where Thompson was employed as an assistant principal. She was a very reluctant witness on behalf of the board and bore no ill will for Thompson. Thompson once attempted to kiss Grove in a vault at the school where the grade records are kept. On that occasion, Grove and Thompson were the only parties present and the vault area became suddenly darkened. Grove requested that he stop, which Thompson did. She was startled and angry. She felt intimidated by Thompson's advances.

5. During November, 1976, Marry Norris ("Norris") was employed as a teacher at Capitol Hill High School and Thompson was the principal. Norris was hired as a remedial reading teacher on November 1, 1976. During the second week of her employment, Thompson requested that she accompany him to meet with a reading consultant of the Board. Thompson took her to a room that was east of the main building. The room contained tables and chairs and chalkboards and could have been used for a classroom. He took her in and turned the lights on in the room. He searched an adjoining room and returned to advise her that no reading consultant would be there. Thompson sat down on a table with

his legs spread and mentioned Norris to come over to him. She refused to do so. Thompson said he wanted to go to bed with her. He looked into her eyes and said it looked like she wanted him sexually. Norris denied having any such inclinations. She attempted to leave the room and Thompson agreed to let her out if she would not mention the incident to anyone. This adversely affected her relationship with Thompson during the remainder of that year, but the normal teacher/principal relationship was reestablished during the 1977-1978 school year.

6. Thompson had been an employee of the Oklahoma City Public Schools for nineteen (19) years. He had served as teacher, counselor, coach, assistant principal and principal at various schools throughout the system. Thompson is a strict disciplinarian. He has been of particular assistance to the public schools in dealing with disciplinary problems at two different high schools. Prior to the complaint filed by the father of Linda Everhart, no complaints had ever been filed against him with his administrative superiors or the board of education concerning alleged improper conduct toward students or teachers.

7. On February 21, 1978, officials of the board advised Thompson of the results of their investigation. He was offered the opportunity to resign or be dismissed, which would give him the right to an appeal such as this proceeding. Thompson elected to resign in writing on that date, without consulting with his attorney or taking further time to consider the matter.

8. On March 16, 1978, Derrald Miller ("Miller") was a teacher at Capitol Hill High School. On that date, after regular school hours, Thompson searched Miller's classroom and found approximately 30 love letters written to Miller from Julie Owensby Williams, one of the witnesses in this case. He took possession of the letters. The letters showed that Williams had a deep hatred for Thompson and that Miller had suggested she write the Board about her complaints against him. He telephoned Dr. Jess Lindley that evening and made an appointment to see him on March 17, 1978. He met with Lindley and revealed certain portions of the letters to him. He asserted that the letters proved that a conspiracy existed to have him dismissed. He suggested that he would accept the return of his resignation, which had been submitted on February 21, 1978. Later that same day, Thompson revealed to Miller that he had taken the letters. On Monday, March 17, 1978, Thompson had further conversations with Miller, one of which was tape-recorded by Miller and is in evidence. The recorded conversation indicates that Thompson threatened to also expose the existence of the letters and their contents to Miller's wife and to the husband of Williams. Thompson stated that Miller and Williams should execute affidavits refuting the testimony given to the District in sworn statement form and that Williams would be wise to contact Thompson's attorney. Thompson denied under oath that he had made several remarks which the tape-recording of his conversation with Miller clearly shows that he did make. Thompson returned the letters to Miller upon order of the District Court of Oklahoma County.

9. During late March, 1978, the press learned of the alleged reasons for the resignation of Thompson. When this word got out, Thompson asked to withdraw his resignation. The Board at first refused to permit Thompson to do so, but relented when Thompson filed a civil suit seeking that relief.

10. The Board of Education of Oklahoma City acted in good faith in connection with its investigation concerning these events. Thompson and Everhart were each given the opportunity to take, and did take, a lie-detector test. The usual investigation procedures were circumvented in an attempt to maintain security in the investigation, and to avoid arousing suspicion. That was successful until the news leak developed. No evidence showed the district's employees to be responsible for the leak.

11. No unlawful conspiracy existed between or among Miller, Everhart, and Norris, or any of the other witnesses, to have Mr. Thompson dismissed. Miller was glad to see Thompson under investigation and did all he could to assist the board in obtaining proof to dismiss him. That alone is not illegal and does not constitute an unlawful conspiracy. The testimony of Kenneth Bailey and Thelma Jean Hill, his mother, as to the existence of a conspiracy between Miller and Everhart is inherently incredible. It is entirely disregarded by this Hearing Judge. Bailey testified that Everhart was helping Miller get Thompson. Hill testified it was the other way around. The following facts also suggest the lack of any such conspiracy:

(a) Everhart's father, not Everhart or Miller, reported the incident to the board. There is no evidence that he was involved in a conspiracy and no reason to believe that he would have been.

(b) Approximately two (2) weeks elapsed between the time of the incident and the reporting of it to the Board by Mr. Everhart.

(c) It is inconceivable that Everhart and Miller would rely on her father to report the incident and wait two weeks to even tell him about it if they were in a conspiracy to get Thompson.

(d) Norris was a reluctant witness. She had no desire to testify at all in this proceeding. She has no present enmity toward Thompson. This hearing judge is not convinced that Miller has sufficient control over her to obtain her perjured testimony. She was a credible witness.

(e) Only the relationship between the witnesses Williams and Miller indicates any significant actual control on the part of Miller. That control was asserted, however, to obtain Williams' testimony, not to create a fantasy out of wholecloth. In any event, this hearing judge does not consider her testimony to be entirely credible and places no reliance thereon.

12. The acts and incidents set forth in findings numbered 2, 3, 4, 5 and 8 above were deliberate, purposeful, willful, and intentional on the part of Thompson. The incidents adversely interfered with the normal

and requisite principal/student or principal/teacher relationship involved.

CONCLUSIONS OF LAW

1. Any teacher may be dismissed at any time or not reemployed for immorality . . . or any reason involving moral turpitude. 70 O.S. Supp. Sec. 6-103.A.

2. To support a finding that the action of the board in dismissing Thompson on the grounds of immorality should be sustained, the board must prove by a preponderance of the evidence that Thompson is a man without morals; i.e., that he has the status of immorality. To put that another way, the board must prove that Thompson lacks all semblance of morality. The definitions of immorality discussed in the Oklahoma cases on the subject, when closely scrutinized, actually are discussions of immoral conduct. *See, e.g., Warkentin v. Kleinwachter,* 116 Okla. 218, 27 P.2d 160 (1933); *In re Hicks,* 163 Okla. 29, 20 P2d 896 (1933). The Board essentially argues that immorality and offenses involving moral turpitude are synonomous for purposes of the act. But to determine that a finding of immorality, in the context of the statute involved, must relate to specific acts or conduct on the part of the teacher or administrator would make surplusage of the language covering any reason involving moral turpitude. The status of being immoral is different from the commission of an immoral act. The latter clearly falls within that portion of the statute relating to "moral turpitude," and is separate from the former.

3. To sustain the action of the board in dismissing Thompson on the grounds of any reason involving moral turpitude, the board must prove by a preponderance of the evidence that Thompson committed one or more acts or offenses involving moral turpitude. Moral turpitude has been defined in Oklahoma as "any conduct contrary to justice, honesty and good morals." *In re Williams,* 64 Okla. 316, 167 P. 1149 (1917). Moral turpitude is further defined in the case of *Kelly v. City of Tulsa,* 569 P.2d 455 (Okla. 1977) as follows:

> "Moral turpitude implies something immoral in itself regardless of whether it is punishable by law. The doing of the act itself, and not its prohibition by statute determines the moral turpitude. The elements of intent and knowledge are regarded as important, and if the wrong is unintentional or if the act is made improper by statute without regard to the mental element, it is not moral turpitude." (Footnotes omitted) *Id.* at 457.

4. Even if the board meets one or both of the separate burdens of proof discussed above, it is not finished. In addition, it must show that the immorality and/or the act or offense involving moral turpitude makes Thompson unfit to be an administrator or teacher. The well reasoned opinions of other jurisdictions involving similar statutes require a nexus between the immorality or immoral conduct proven and the

fitness of the person to teach. *See. e.g., Morrison v. State Board of Education,* 82 Cal. Rptr. 175, 461 P.2d 375 (1969). In that case, it was held that the private sexual conduct of a teacher, even though such conduct may have offended the morals of some people, was not good cause to dismiss the teacher since it was not proved that it interfered with his ability to teach and positively interact with his students.

5. However, sexually provocative or exploitative conduct by a male teacher with a minor female student indicates unfitness to teach in and of itself. It is considered inherently harmful to the student-teacher relation, and thus to the school district. *Denton v. South Kitsap Scoool District,* 516 P. 2d 1080 (Wash. App. 1973). *See also Board of Trustees v. Stubblefield,* 16 Cal. App. 3rd 820, 94 Cal. Rptr. 318.

6. The conduct of Thompson with respect to Everhart indicates an unfitness to teach. It was an act or offense involving moral turpitude in that it was willful and deliberate, contrary to generally acceptable moral practices, hostile to the welfare of that particular student and the general public, and inherently harmful to the student/principal relationship.

7. The incident involving Thompson and Norris also constitutes an act or offense involving moral turpitude. It is not under all circumstances improper for an adult male to make sexual advances to an adult female. It is the occurrence during normal school hours, upon school grounds, and in a setting where the female teacher is subjected to the implicit, if not actual, intimidation of her supervisor, that makes the act one involving moral turpitude. Although the situation was ultimately overcome, the offense did undermine the teacher/principal relationship.

8. The incident involving Thompson and Dickey is not an act or offense involving moral turpitude. While the actions did undermine the teacher/principal relationship, it was not at all clear that Thompson's advances would be rebuffed. The act did not occur on school premises. The relaxed setting did not bear the same implications or threat of intimidation and force as are attendant in the school environment. While it was an unfortunate and ill-advised adventure, it does not and should not constitute grounds for Thompson's dismissal.

9. The transactions of Thompson with respect to Miller constitute acts and offenses involving moral turpitude. Thompson took the letters by stealth, knowing them to be the personal property of Miller to which he had no right, title, claim or interest. While the original taking was wrongful, it alone might not constitute such an act of moral turpitude as to warrant his dismissal. The failure to return the letters after presenting them to the board, the attempted use of the letters by Thompson to intimidate Miller, to impede the board's investigation, to obstruct the lawful purposes of these proceedings, and to suborn Miller's testimony, however, are such acts. Thompson's intent to release the letters to Miller's wife and Williams' husband in the event that Miller and Williams did not issue retractions of their prior sworn statements could not be misunderstood. While Thompson was clearly under stress due to the charges and the investigation, and their becoming public knowl-

edge, that does not excuse his actions. Thompson's complete and thorough denials of each and every statement harmful to him in the tape-recorded conversation with Miller indicates a lack of candor and a total lack of rectitude or remorse with respect to such events. It further shows an intolerable indifference to the opinions of the community, the sanctity of these proceedings, and the rights of Miller and Williams.

10. Thompson is not immoral. The Board has failed to prove that Thompson should have been dismissed on the grounds of immorality.

11. Thompson did commit acts involving moral turpitude. Those acts do show his lack of fitness to teach. The Board has met its burden of proof that Thompson should have been dismissed on the grounds of acts or offenses involving moral turpitude.

12. The demurrer to the evidence interposed by Thompson on July 21, 1978, should be and is hereby sustained as to the grounds of immorality and should be and is hereby overruled and denied with respect to the grounds of offenses involving moral turpitude.

ORDER

In accordance with 70 O.S. Supp. Section 6-103.11B.2., the decision of the Board of Education of Oklahoma City, Independent School District No. 89 of Oklahoma County, Oklahoma, for the suspension and termination of Ray Thompson should be and it is hereby sustained.

CHAPTER 10

STATE OF OKLAHOMA

DENNIS SANDERS

-VS-

ROCKY MOUNTAIN BOARD OF EDUCATION

October 17, 1978
Eugene Carr, Hearing Judge

DECISION

That the Rocky Mountain Board of Education reinstate Dennis Sanders with full status and benefits.

FINDINGS OF FACT

It is the finding of this panel that the burden was on the Rocky Mountain Board of Education to show this panel by a preponderance of the evidence that the appellant, Dennis Sanders, willfully neglected his duty or duties as either a principal or teacher at the Rocky Mountain School. This panel finds that the school board has not met this burden of proof and that the appellant, Dennis Sanders, did not willfully neglect his duties.

This panel further finds that no emergency existed on March 20, 1978, to justify the calling of an emergency meeting, without notice, to justify the termination of non-reemployment of the appellant.

This panel further finds that a problem arose between the school board and the principal because of a conflict among the teachers, which the principal attempted to resolve. Being unable to resolve the conflict, the teacher-principal requested a meeting of the school board with the teachers in question to be in attendance. The problem was temporarily solved but returned several weeks later. This problem was introduced into the school system by the employment of a special education teacher whose teaching time cut into the teaching time of the other teachers, who were not particularly cooperative with the special education teacher.

When this problem returned, sometime later, it triggered other problems with the teachers and the general public. The school board, in its efforts to solve the problem, decided that it was the principal's duty to

fire some of the teachers involved in this problem. The principal told the School Board that these teachers were tenured teachers and must be evaluated before firing, according to state law. The School Board then ordered the principal to evaluate the teachers according to state law, which the principal did, but his evaluation did not recommend firing these teachers.

The Board of Education then decided to fire Dennis Sanders, the appellant herein, because in their opinion he was disobeying them or opposing their collective will.

At this point in time, one member of the school board quit and upon the appointment of a new member to replace him, a meeting was held, without notice, and therefore without complying with the open meeting law and according to the open meeting law, any action taken in regard to the termination of the contract or the non-reemployment of the principal, Dennis Sanders, would be invalid. In this meeting, there was not shown any emergency which would justify a complete lack of notice, as required by law.

This panel further finds that the board did not hold a legal meeting to terminate the principal, Dennis Sanders, prior to the deadline established by state law of April 10 of each year and, therefore, according to the applicable law, the principal-teacher was rehired by action of law and the board action taken on April 17, 1978, for the cancellation and dismissal of the tenured teacher in this case, Dennis Sanders, is ineffective to ratify that action of the board taken on March 20, 1978.

There further has been no evaluation or admonishment of the principal, Dennis Sanders, by the county superintendent or by any lawful person appointed by the school board for the 1977-1978 school year.

This panel found that there was no evidence introduced indicating that Dennis Sanders was not properly functioning as a teacher. The only evidence introduced in regard to that fact praised Dennis Sanders for his teaching ability.

This panel finds that it is the duty of the county superintendent to formulate a written policy and give general supervision to the school and not the duty of the principal, but if the policy is not prepared or formulated, then the school board and the principal of the school should prepare a policy and carry it out.

This panel further finds that the contract, dated April 7, 1977, is a one-year contract which would have expired at the end of the 1977-1978 school year, except for the automatic renewal and extension by act of law on April 10, 1978.

CONCLUSIONS OF LAW

This panel finds that the board meeting of the Rocky Mountain Board of Education held on March 20, 1978 was called and held in violation of the open meeting law and that all action in regard to the termination and non-reemployment of Dennis Sanders at that meeting was invalid and that the subsequent meeting of April 17, 1978, was

ineffective to ratify the dismissal and non-reemployment of Dennis Sanders taken by the board meeting in its March 20, 1978, meeting. The April 17, 1978, meeting was ineffective to dismiss Dennis Sanders for two reasons: 1. By act of law, he had already been reemployed on April 10, 1978; and, 2. Because the 1978-1979 year had not commenced and the principal-teacher could not be guilty of doing anything wrong until the school year commenced.

ORDER

It is therefore ordered by this hearing panel that the Rocky Mountain School Board reinstate Dennis Sanders as a tenured teacher with full status and benefits accrued and accruing to him.

CHAPTER 11

STATE OF OKLAHOMA

IN THE MATTER OF THE APPEAL OF BOYCE HARRISON

-VS-

THE KINGSTON BOARD OF EDUCATION OF KINGSTON, OKLAHOMA

December 29, 1978
Charles R. "Chuck" Lane, Hearing Judge

This report is submitted in accordance with 70 O.S. § 6-103.11 by Charles R. "Chuck" Lane, hearing judge, in the matter of the appeal of Boyce Harrison from non-renewal by the Kingston Board of Education of Kingston, Oklahoma.

On April 3, 1978, a letter dated April 3, 1978, was sent by registered mail return receipt requested to Mr. Harrison. The letter was signed by the superintendent of the Kingston Public Schools, Johnny McFatridge, and Mr. Delmas Northcutt, clerk of the Kingston Board of Education. The letter was in accordance with 70 O.S. § 6-103.4(B). This letter stated that Mr. Harrison's contract with the Kingston School Board would expire June 30, 1978, and would not be renewed for the 1978-79 school year because of willful neglect of duty. The letter informed Mr. Harrison of his right to appeal and that he had 10 days from receipt of the letter to inform the Kingston Board of Education of his decision. Mr. Harrison received the letter and signed the return receipt on April 5, 1978. Mr. Harrison mailed a letter dated April 11, 1978, to Mr. Delmas Northcutt, clerk of the Kingston Board of Education, requesting a hearing in regard to the non-renewal of Mr. Harrison's teaching contract.

Copies of the above mentioned letters and the return mail receipt are marked as hearing panel's exhibit #5.

On June 26, 1978, Winona Wettengale, executive secretary of the Oklahoma State Board of Education, notified me by long distance phone call that I had been selected hearing judge in this matter on June 20, 1978, by Mr. Harrison's attorney, Ms. Becky Patten, and the Kingston Board of Education's attorney, Mr. Dan Little. On June 30, 1978, notice

was mailed to all parties setting the hearing in this matter for July 17, 1978, at 2 o'clock p.m. in the District Court House, Madill, Oklahoma.

Prior to July 17, 1978, Mr. Harrison's attorney, Ms. Patten, sent interrogatories and a motion to produce to Mr. Dan Little, attorney for the Kingston Board of Education. The answers to these interrogatories and the documents requested were furnished to Ms. Patten, the teacher's attorney, myself, and the two hearing panel members. The hearing panel member chosen by Mr. Harrison was Mr. Derrell F. Johnson, 4th Grade elementary teacher from Ardmore, Oklahoma. Mr. Carl Buck was the panel member chosen by the Kingston Board of Education. Mr. Buck is a retired school teacher and administrator from the Kingston area.

On July 17, 1978, the hearing in this matter was commenced at 2 p.m. in the associate district judge's court room in Madill, Oklahoma. Present at the hearing were:

1. Wanda Parrish, Court Reporter, who made a complete written transcript of all proceedings.
2. Charles R. "Chuck" Lane, Hearing Judge.
3. Mr. Carl Buck, Hearing Panel Member, selected by the Kingston Board of Education.
4. Mr. Derrel Johnson, Hearing Panel Member, selected by the teacher, Mr. Boyce Harrison.
5. Ms. Becky Patten, Attorney for Mr. Harrison.
6. Mr. Dan Little, Attorney for the Kingston Board of Education.

The Hearing was called to order and Ms. Patten, attorney for Mr. Boyce Harrison, presented a written motion to dismiss the appeal to the hearing panel. Argument was heard on the motion and the hearing judge reserved ruling on the motion until after all testimony had been heard.

The rule of sequestration of witnesses was invoked and all prospective witnesses except Mr. Johnny McFatridge, who represented the Kingston Board of Education, and Mr. Boyce Harrison, the appellant, were removed from the court room until they were called to the witness stand. The witnesses were told not to discuss their testimony with anyone except the attorneys in the case until excused by the hearing judge.

Mr. Dan Little presented his opening statement on behalf of the Kingston Board of Education and Ms. Becky Patten presented her opening statement on behalf of Mr. Boyce Harrison.

Witnesses were called to testify under oath on behalf of the Kingston School Board and some (26) twenty-six exhibits were marked Kingston Board of Education exhibits # 1-26 and were introduced and admitted into evidence in this case. After the Kingston Board of Education had presented their evidence counsel for Mr. Harrison interposed a demurrer to the evidence and renewed her motion to dismiss. The demurrer was over-ruled and the hearing judge reserved ruling on the motion to

dismiss until all of the evidence had been received in this case. Ms. Patten offered testimony on behalf of Mr. Harrison after which Mr. Little called rebuttal witnesses to testify on behalf of the Kingston Board of Education. Closing arguments were presented by both the teacher's attorney and the Kingston's Board of Education attorney. The hearing judge adjourned the hearing at approximately 3:45 a.m. on July 18, 1978.

The hearing judge requested a copy of the transcript of the July 17-18th hearing be furnished to each of the attorneys in the case and a copy to the hearing judge and one to each panel member. The hearing judge further requested that the attorneys for both sides submit briefs discussing the legal and factual issues raised during the July 17-18th hearing. On August 10, 1978, Mr. Dan Little, attorney for the Kingston Board of Education, submitted his brief in regards to the motion to dismiss and further discussed the question of willful neglect of duty. Ms. Becky Patten, attorney for Mr. Boyce Harrison, submitted her brief on August 10, 1978. Ms. Patten's brief filed on this date discussed only the three legal issues raised in her motion to dismiss which was filed with the hearing judge on July 17, 1978.

On August 21, 1978, the hearing judge issued an order approving a stipulation between the Kingston Board of Education and Mr. Boyce Harrison to waive the time limit required by 70 O.S. § 6-103.11 for filing of the hearing panel's written report.

On September 29, 1978, Ms. Becky Patten, Mr. Harrison's attorney, submitted her supplemental brief addressing the merits of the case and the question of willful neglect of duty.

On October 1, 1978, the hearing panel, Mr. Lane, Mr. Johnson, and Mr. Buck met in Ardmore to discuss the evidence and to try and reach a decision in the case. It was agreed that more testimony was needed before a decision could be reached.

The hearing judge sent proper notice to all parties of a hearing to be held on October 28, 1978, in Duncan, Oklahoma, at the Stephens County Court House. On Saturday, October 28, 1978, a hearing was held in Duncan, Oklahoma, at the Stephens County Court House. The hearing was commenced at 10:00 a.m.with Mr. Chuck Cunningham, certified court reporter, taking the recorded sworn testimony of the following witnesses who had previously been ordered by the hearing judge to appear at the hearing and give testimony:

1. Mr. Dennis Northcutt, who was the clerk of the Kingston Board of Education in July of 1977.
2. Mr. Wayne Scribner, who was the president of the Kingston Board of Education during the school year 1977-78.
3. Dr. Hock, who was a member of the Kingston Board of Education during the time Mr. Harrison's contract was not renewed and who was on the board during most of the time Mr. Harrison was employed by the Kingston Board of Education.

4. William J. Smith, a member of the school board during the period of time when Mr. Harrison's contract was not renewed.
5. Geraldine Anderson, teacher who was a member of the committee that was formed to prepare the written policy of evaluation required by 70 O.S. § 6-103.2 for the Kingston Board of Education, which is marked Kingston Board of Education exhibit 8-A.
6. Mr. Wayne West, who was a teacher and a member of the committee that was formed to prepare a written policy of evaulation required by 70 O.S. § 6-103.2.
7. Rex Lokey, high school English teacher, who served on the committee with Geraldine Anderson, Rex Lokey and Mr. Wayne West.
8. Paula Oliver, elementary teacher, who served on the committee with Geraldine Anderson, Rex Lokey and Mr. Wayne West.
9. Mr. Johnny McFatridge, Superintendent of Schools, who served on the same committee as Geraldine Anderson, Wayne West, Rex Lokey and Paula Oliver.

Mr. Harrison's contract school board exhibit #27 was introduced into evidence along with school board exhibit #28 and panel members exhibit #1-3, which were various briefs, pleadings, notice letters, interrogatories and copies of court decisions which were considered by the hearing judge on the questions of law involved in this case.

Closing arguments were waived by both sides and the hearing judge ruled that all evidence and matters of law had been submitted by both parties and, therefore, it was time for the hearing panel to begin deliberations. Prior to the hearing panel beginning its deliberations, the parties entered into a stipulation which was made a part of the record of this case. Said stipulation was that the decision rendered in this case would be given to both parties by telephone as soon as possible. However, the Kingston Board of Education and Mr. Boyce Harrison specifically agreed that the hearing panel's decision would not be final until the receipt of the formal written report of the hearing panel by both parties via the United States mail. Then the decision would be final and the 30 day period in which to commence an appeal as prescribed by 70 O.S. § 6-103.12.

On Sunday, October 29, 1978, the hearing judge called Ms. Becky Patten, attorney for Mr. Boyce Harrison, and Mr. Dan Little, attorney for the Kingston Board of Education, to report that the decision of the hearing panel was that the decision of the Kingston Board of Education to not re-employ for the 1978-1979 school year because of willful neglect of duty was correct and would therefore be upheld. Mr. Derrel Johnson, hearing panel member, did not agree with the decision and has submitted a letter dated October 19, 1978, setting forth his reasons for not concurring in the ruling by the hearing judge. Mr. Johnson's letter is filed in the record of this case and is made a part of this report by being marked as appendix A and attached hereto and made a part hereof.

FINDINGS OF FACT

In reaching this decision the hearing judge makes the following findings of fact and conclusions:

> Because Mr. Harrison was a tenured teacher, the Kingston Board of Education had the duty to show by a preponderance of the evidence that Boyce Harrison was guilty of willful neglect of duty, based upon acts or omissions which jointly and severally proved each necessary element of the statutory cause of "willful neglect of duty." The Oklahoma statutes are silent in regards to what acts and/or omissions would be considered "willful neglect of duty." It, therefore, places the burden on the hearing judge to make his own decision as to what constitutes willful neglect of duty.

Black's Law Dictionary, revised 4th edition, gives a variety of definitions for the term "willful": in its discussions of the word "willful" Black's Law Dictionary states:

> " 'Willful' is a word of many meanings depending on the context in which it is used."

Black's Law Dictionary goes on to state that there are a variety of definitions for the term "willful":

1. Proceeding from a conscious motion of the will: voluntary.
2. Intractable: having a head strong disposition to act by contradiction.
3. Obstinate: perverse.
4. Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary.
5. Conscious: Knowing; done with stubborn purpose but not with malice.
6. Premeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification.

It is the hearing judge's opinion that the word "willful" should be construed to mean "intentionally and knowingly." 70 O.S. § 6-103 is not a criminal statute but simply defines the grounds upon which a teacher may be dismissed. The other grounds for dismissal other than willful neglect of duty which are found in 70 O.S. § 6-103 are:

1. Immorality, cruelty, incompetence, teaching disloyalty to the American Constitutional System of Government or any reason involving moral turpitude.

Willful neglect of duty has been found by the State Board of Educa-

tion and the Professional Practices Commission, which used to be the administrative bodies which decided appeals by teachers from the decision of local school boards not to renew their contracts. Willful neglect of duty has been found by the State Board of Education and the Professional Practices Commission to be present when the teacher:

1. Refused to accept supervision from his superiors, *In the Matter of the Appeal of Paul Gordon,* State Board of Education, September 20, 1976.
2. Would not turn in work orders.
3. Allowed students under his supervision to be in the student lounge during class time and go into other classes which were in session.
4. Could not account for the presence of students.
5. Failed to sign in when he arrived at school.
6. Was absent from assigned duties without authorization.
7. Left his class unsupervised.
8. Failed to deliver to the principal, as he was requested to do, a textbook requisition.

As can be seen from the above decisions, willful neglect of duty was found when the teacher performed an act of omission or commission in his duties as a teacher. If the teacher knowingly and intentionally performs the act of omission or commission, then it fell under the category of willful neglect of duty. If a teacher did not have the necessary intellect or knowledge to know that he was performing an act of omission or commission, then his actions would come under the heading of incompetence. In either situation, the administration or school board would have the right to dismiss a teacher for performing acts of omission or commission not in line with the duty of a teacher.

The position of Mr. Harrison is that willful neglect of duty means that the actions must be done with evil intent, with bad motive, or with purpose and malice and with an intent to harm the school board and the students. In the situation of a teacher who has a great amount of education and who has voluntarily taken a position of public trust whereby he or she has voluntarily committed themselves to see to it that our children have the best education possible under conditions which are conducive to learning and which also protect the student from injuring himself or injuring a fellow student.

In this situation of a teacher, the definition of willful neglect of duty purposed by Mr. Harrison could lead to absurd results. For example, if the teacher sincerely believed that it was against the best interest of the students to have discipline and homework and purposefully and willfully refused to enforce discipline or to give homework, but had the best intentions and sincere beliefs in his actions, then the administration could not dismiss that teacher for willful neglect of duty. The case of *Shields v. State,* 89 P.2d 756 (1939) did hold that the acts relied upon to constitute willful administration must have been committed with bad or

evil intent or contrary to the known duty or be such acts as to require the implication or imputation of bad or evil intent or knowledge of breach of duty or the officer must be guilty of some conscious wrong or inexcusable recklessness in the discharge or failure to discharge an official duty.

This case has been cited in connection with the definition of "willful" only one time since 1939, said citation being the case of *Simpson v. Oklahoma Alcoholic Beverage Control Board*, 409 P.2d 364 (1965). In the *Shields* case, *supra*, the police commissioner of the City of Tulsa was charged under a criminal statute providing for removal of office for willful maladministration.

The Oklahoma Supreme Court in the case of *Simpson v. Oklahoma Alcoholic Beverage Control Board, supra*, held that the question was whether the Alcoholic Beverage Control Board could revoke a license if the "licensee has willfully violated any of the provisions of this Act." The court discussed the *Shields v. State* case and compared it to *Oklahoma Alcoholic Beverage Control Board v. Milam*, 393 P.2d 823 (1964), in which the court held:

> "The word 'willfully' is of similar import or the equivalent of 'knowingly.' "

In reconciling the two cases the Oklahoma Supreme Court ruled that it is necessary to analyze the statute in which the word "willful" is used to determine the legislative intent and purpose in order to determine which meaning of the word "willfully" should be applied. The court at pages 366 and 367 held as follows:

> "(1) In the present case the licensees were charged with the violation of the rules and regulations promulgated by the ABC Board under authority of the Alcoholic Beverage Control Act. The penalty for enforcement of such rules and regulations is governed by 37 O.S § 528.
>
> 'The question then arises as to the meaning and effect of the word "willfully" as provided in section 528. In this respect the licensees contend the evidence was wholly insufficient to sustain the findings and judgment of the trial court.
>
> 'In *Oklahoma Alcoholic Beverage Control Board v. Milam, supra*, we said the word "willfully" is of similar import or the equivalent of "knowingly" and further said: "It is our interpretation of the Act itself that the word "willfully" in said sec. 528, in connection with suspension of the license, requires that the commission of the prohibited acts. Otherwise, a licensee, without knowledge of a violation of the Act by the licensee's salesman could be deprived of a valuable right."
>
> 'Of course, a person may commit an act in such a manner that his carelessness and indifference to the consequences is so inexcusable that such acts are deemed to have been done knowledgeably and are equivalent to a willful act intent. In *Shields v.*

State, 184 Okl. 618, 89 P.2d 756, there was involved a proceeding to remove a public officer from office for "willful maladministration." In discussing the import of the word "willfully" we said:

"Every voluntary act of a human being is intentional but generally speaking a voluntary act becomes "willful" in law only when it involves some degree of conscious wrong or evil purpose upon the part of the actor or at least an inexcusable carelessness on his part, whether the act be right or wrong."

'(2-4) It is important in the construction of a word used in a statute to analyze the whole act itself to determine the legislative intent and purpose. In *Arrow Distilleries v. Alexander*, 7th Cir., 109 F.2d 397, 406, the Court in construing a provision of the Federal Alcoholic Administration Act, said, "the purpose of a statute is material to the determination of the meaning of 'willfully' as used in the statute." It is apparent upon reading the Oklahoma Alcoholic Beverage Control Act that the legislature intended for the ABC Board to have substantial authority and discretion and closely supervising and controlling the liquor industry in the State of Oklahoma. This is pursuant to the Constitutional requirement that the legislature provide for strict regulation and control of liquor industry in our State. Oklahoma Const. Art. 27 § 3. The Act also stresses the importance of individual responsibility on the part of the licensee for his own acts and conduct. In light of this construction, where the acts in question are personally committed by the licensee or under his direct supervision, such conduct is presumptive of being done 'willfully.' "

'(See *Simpson v. Oklahoma Alcoholic Beverage Control Board, supra*, at 366-67)'

1. The hearing judge in interpreting 70 O.S. § 6-103 feels that the Oklahoma Legislature intended only a "knowingly and purposeful" violation definition be applied in order for a teacher to be guilty of willful neglect of duty. The legislature would not require that a teacher's neglect of duty be with evil intent and with purpose to do harm before the teacher could be fired or not renewed. Quite the contrary, the hearing judge finds that one of the sole purposes of passing Senate Bill 249 was to upgrade the quality of the teaching profession in the State of Oklahoma. The legislature has never intended to allow any teacher such leeway and such a wide margin of misbehavior as Mr. Harrison's attorney argues. It must be remembered that the officials of the school board are elected by the citizens and represent the citizens. It must also be remembered that the citizens and the legislature expect teachers to perform and to fulfill their duties according to high standards. The teacher's relationship with and influence upon the students is too great and important to let a teacher get away with direct neglect of duty so long as this neglect of duty is only "intentional and knowingly" but without evil purpose.

2. The hearing judge specifically finds that the Kingston Board of

Education of Kingston, Oklahoma, has presented clear and convincing evidence that Mr. Harrison did make an unauthorized and improper purchase of a welder on September 28, 1976, for the sum of $352.00. Further, there is clear and convincing evidence that Mr. Harrison made an unauthorized and improper purchase of a second welder on November 2, 1976, in the sum of $413.00. These two welders were purchased without authority and improperly charged to the Kingston High School Industrial Club and the Kingston Industrial Arts Club. Mr. Boyce Harrison failed to pay for the two welders after the discovery of the improper purchase and charging of these welders after he had agreed to do so and had been instructed by Superintendent McFatridge to return said welders. It is further found that Mr. Boyce Harrison, without authorization, improperly removed the two welders which were school property to the home of Mr. Boyce Harrison in June, 1977. To add insult to injury, Mr. Harrison refused to return the welders to the school when instructed and ordered by Superintendent McFatridge. Instead, Mr. Harrison, without authorization of the school administration or the Kingston Board of Education, sold one of the welders in June of 1977. Mr. Harrison, without authorization, improperly held the proceeds of said sale, which were school funds resulting from the sale of said welders. Mr. Harrison refused to turn over the proceeds from the sale of said welder to Superintendent McFatridge and then the Kingston Board of Education, despite direct demands and instructions to do so, first by the superintendent and second by the Kingston Board of Education. There were three different meetings by the Kingston Board of Education in regards to this unauthorized purchase by Mr. Boyce Harrison of the welders. Mr. Harrison misinformed the Kingston Board of Education at its July 5, 1977, meeting when he did not inform them that one of the welders had already been sold, but instead waited until the August 1, 1977, meeting to inform the school board that one of the welders had been returned to the school and that the other had been sold. Mr. Harrison was again reminded by the board of education of the seriousness of his acts and only after the threatening of legal action and the involvement of the school board's attorney was the matter resolved by Mr. Harrison purchasing a new welder to replace the one that was sold. (See School Board's Exhibits 11, 12, 13, 14 and 15; See also testimony by Superintendent McFatridge, transcript 2-23-38, 65, 66; See admission by Boyce Harrison, transcript 4-38, 39, 41 and 44.)

3. The Kingston Board of Education, Kingston, Oklahoma, presented clear and convincing evidence that Mr. Boyce Harrison failed to follow the direct and clear instructions of his principal, James Caldwell, to keep his third hour students in the classroom during the full class period, said refusal beginning August 15, 1977, and continuing throughout the 1977-78 school year. That Mr. Harrison failed to follow the instructions of his principal, James Caldwell, to keep his third hour students in the classroom despite telephone calls, written instructions, and personal conferences between Principal Caldwell and Boyce Harrison, particularly in September of 1977, in which Principal Caldwell

explained to Boyce Harrison the problems his students were creating by coming to the school cafeteria at the wrong time when the younger students were supposed to be eating. There is clear and convincing evidence that Principal Caldwell gave Boyce Harrison all reasonable notice of the problem and an opportunity to correct this problem with his students, but Boyce Harrison lawfully and willfully failed to counsel with Principal Caldwell or to cooperate with Principal Caldwell to solve this problem.

Instead, by his own partial admission and by acts, Boyce Harrison did adopt a policy of ignoring Principal Caldwell and his instructions. Principal Caldwell made under the circumstances a more than reasonable effort to document this matter in writing, but Mr. Boyce Harrison refused to sign said documentation in front of Mr. Don L. Cox, an employee of the Kingston School System. Mr. Harrison refused to sign said documentation or to submit alternative documentation. Mr. Harrison made the statement that he would not "sign anything" in both the presence of Mr. Cox and Mr. Caldwell. (See Kingston School Board exhibits 1, 2, 3, 4, 5, 6 and 7; See testimony of Caldwell, transcript 1-8-22, 35, 50, 53-54, and 60: testimony by Don L. Cox, transcript 3-1-4; See also the admissions by Mr. Boyce Harrison, transcript 4-46-50.)

4. There is clear and uncontradicted evidence that Mr. Boyce Harrison was not present in his classroom on September 29, 1977, to supervise his shop students during the normal class time. That on September 29, 1977, Superintendent McFatridge discovered the students in Mr. Harrison's classroom operating power equipment without any supervision. Superintendent McFatridge had the students turn off all of the power equipment and then went in search of Mr. Harrison. Superintendent McFatridge discussed this matter with Mr. Harrison and presented a written document for Mr. Harrison to sign stating that Mr. McFatridge had observed students in Mr. Harrison's classroom operating power equipment without being supervised on September 29, 1977. Mr. Harrison refused to sign said documentation without stating any disagreement with the facts alleged in the document or giving any other reason for refusing to sign said document. (See School Board exhibit 9; testimony by Superintendent McFatridge, transcript 2-11; See admissions by Boyce Harrison, transcript 4-54-57.)

5. That Mr. Harrison wrongfully and improperly assessed in May, 1977, a lost tool fee against his shop students when he had previously been instructed that such fees were illegal, improper and not permitted in the Kingston School System. (See Kingston School Board exhibit 16; testimony by Superintendent McFatridge, transcript 2-39-42).

6. Mr. Boyce Harrison willfully refused to follow the school administration's request that he collect money for proper and legal bills for materials ordered by him in the name of the Kingston High School from the Paxton Lumber Company. There was sufficient testimony to document that this was a duty which was part of Mr. Harrison's responsibilities as a shop teacher. The invoices to the Kingston High School for these materials were dated beginning September 17, 1976, and went

through April 26, 1977, totaling a sum of $1,754.14. Again, at the end of the school year 1977, Superintendent McFatridge instructed Mr. Harrison to collect the money owed by the students to pay the debt. At that time Mr. Harrison advised Superintendent McFatridge that he would not try to collect the bill from the respective students despite direct and repeated instructions from Superintendent McFatridge to do so and after Superintendent McFatridge had explained why the student fee for lost tools was illegal but why individual bills for students for materials actually used by that student on his own individual project was legal.

Mr. Harrison further failed to comply with his agreement with Mr. McFatridge that they would get the account paid for over a period of six (6) months. This agreement was documented in writing and dated August 18, 1977, and was a letter from Mr. Johnny McFatridge and Mr. Boyce Harrison, signed by each, to Paxton Lumber Company, stating that in agreement with their phone conversation with the Paxton Lumber Company personnel they would like to clear up the delinquent account over a period of six months and to make monthly payments of approximately $250.00 a month to reduce the outstanding balance of $1,367.00. (See Kingston School Board exhibits 16, 17, 18, 19, 20 and 21; See testimony by Superintendent McFatridge, transcript 2-42-52; transcript 4-11-111; See also admission by Boyce Harrison, transcript 4-62-66.)

7. The hearing judge further finds that the Kingston Board of Education has presented clear and convincing evidence of the willful, illegal, unauthorized purchase of a compound bow for Mr. Harrison's personal use from Ward's on October 9, 1976, which was charged by Boyce Harrison to the Kingston School System. That Mr. Harrison refused to go to Ward's to pay for the bow and to separate this purchase from the Kingston High School account when the wrongful purchase was discovered by Superintendent McFatridge in November, 1976, and after Superintendent McFatridge instructed Boyce Harrison in November, 1976, to take care of the matter immediately by going to Ward's to pay for the compound bow from his separate personal funds, said matter not being resolved until after Superintendent McFatridge had to call Boyce Harrison in for another meeting in December, 1977. Mr. Harrison testified at the hearing that his reason for purchasing said bow was to form an archery class which he admitted was never formed and he never denied that the compound bow was not kept for his own personal use. (See testimony by Superintendent McFatridge, transcript 2-21-23; See also explanation by Boyce Harrison, transcript 4-35-38).

8. The hearing judge finds that there is clear and convincing evidence of the wrongful failure by Boyce Harrison in May, 1977, to keep his students in the classroom the full class period which led to an incident where his unsupervised students, who had left the class early, broke a window and door on a Kingston school bus. When Principal Caldwell told Mr. Harrison of the incident and the problems created by his students leaving early and admonished him to correct the problems, Mr. Harrison refused to discuss the problems with Principal Caldwell

and simply refused to make any kind of response and walked out of Principal Caldwell's office while Mr. Caldwell was asking him to respond for the third time. (See testimony by Principal Caldwell, transcript 1-6-8; testimony by Principal Harold Henry, transcript 3-1-6; See admission by Boyce Harrison, transcript 4-49-50.)

9. The hearing judge further finds that the Kingston Board of Education presented clear and convincing evidence that Mr. Boyce Harrison wrongfully allowed his son, Danny Harrison, in April, 1977, to spend three full days of school working in the shop class in special preparation of an industrial arts show contrary to general instructions and further compounded this problem by wrongfully and erroneously reporting to Principal Caldwell that Danny Harrison had been ill and absent for the three days. Mr. Danny Harrison's presence in the shop classroom and his absence from class was clearly established and the wrongful and erroneous reporting to Principal Caldwell admitted by Mr. Harrison. (See testimony by Principal Caldwell, transcript 1-23-27; See admission by Boyce Harrison, transcript 4-67-71.)

10. The hearing judge further finds that the Kingston Board of Education in its decision not to renew Boyce Harrison's contract did consider problems and incidents involving Boyce Harrison which had built up over the years and which were prior to the 1977-78 school year and which were prior to the previous decision to renew his contract, said problems and incidents including the following:

A. Unauthorized changing of the locks by Boyce Harrison to the shop building and wrongful refusal to give Superintendent Gerald Barton a key to the shop building despite specific requests by Superintendent Barton.

B. Unauthorized and wrongful taking of school property, a lawn mower, to his home by Boyce Harrison.

C. Repeated and continuing problems over the years in assessing, collecting, handling and accounting for student money and the Industrial Art Club's money.

D. Repeated and continuing friction between Boyce Harrison and a series of administrators causing the Board of Education to discuss whether or not to rehire Boyce Harrison nearly every year. (See testimony of school board members from the hearing on October 28, 1978, specifically Mr. Delmas Northcutt, Mr. Wayne Scribner, Dr. Hock and Mr. William J. Smith.)

11. That the Kingston administration and in particular Principal Caldwell and Superintendent McFatridge did not conspire to set up Boyce Harrison to be fired as believed by Mr. Boyce Harrison. The administration did make reasonable efforts to counsel with Mr. Boyce Harrison but as admitted by Mr. Boyce Harrison, Mr. Harrison did adopt a policy of ignoring Mr. Caldwell's and Mr. McFatridge's orders, recommendations and warnings. That the counseling efforts did fail not because the administrators had not attempted to advise Mr.

Harrison of the problems and to give him a reasonable opportunity to correct and resolve the problems. As late as March 1, 1978, Mr. Harrison failed to supervise his students at a school assembly. Further, Mr. Harrison, without authorization, ordered and purchased material from McNight Publishing Company in the sum of $294.15, said purchasing occurring in April and May of 1978.

12. The hearing judge further finds that the administration and in particular Superintendent McFatridge and Principal Caldwell by their own admission did not evaluate Boyce Harrison pursuant to Senate Bill 249 and the procedures adopted by the Kingston School Board on November 17, 1977, but the failure to follow said procedure did not prejudice Boyce Harrison because the situation had already deteriorated so badly by the end of September, 1977, that any formal evaluation on Senate Bill 249 written forms would not have corrected the problems and conflicts. Further, Mr. Harrison had already received written notice and documentation on various occasions prior to the passage of Senate Bill 249 and had ignored these written orders and notices.

The hearing judge feels that this is an appropriate time to state his legal reason for over-ruling the first issue raised in the motion to dismiss, filed by Boyce Harrison's attorney. Mr. Harrison asserts that Superintendent McFatridge did not make a written recommendation that Mr. Harrison not be re-employed stating the statutory grounds upon which his recommendation was based, as required by 70 O.S. § 6-103.4 (a). The uncontradicted evidence is that the superintendent did not make a written recommendation, but did make an oral recommendation to the Kingston School Board that Boyce Harrison not be re-employed and did orally state the statutory grounds upon which his recommendation was based, said reason being willful neglect of duty. Said recommendation being made at the school board hearing held on March 6, 1978 as evidence by school board's exhibit #2.

70 O.S. § 6-103.4 (a) states:

> "Whenever a Superintendent of a School District determines that cause exists for the dismissal or non-reemployment of a teacher employed within the School District, he shall submit a recommendation in writing to the Board of Education for such School District. In the case of a tenured teacher the recommendation shall contain the one or more statutory grounds for the potential dismissal or nonreemployment. The recommendation for the dismissal or nonreemployment of either a tenured or a probationary teacher shall be approved or rejected upon a majority vote of the Board Members."

The clear cut question is whether the statutory requirements of a recommendation in writing is mandatory, rendering invalid and void the subsequent action taken by the Kingston School Board on the oral recommendation, or whether the requirement is directory, meaning

that the subsequent action taken by the board would not be rendered invalid and void. 82 Corpus Juris Secundum § 374 *et seq.* contains a general discussion of when a statute should be construed as mandatory or directory. Section 374 states:

> "A failure to follow a mandatory statutory provision renders the proceeding to which it relates illegal and void, while a failure to follow a directory provision does not necessarily invalidate the proceeding.
>
> "A mandatory provision in a statute is one the omission to follow which renders the proceeding to which it relates illegal and void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding; and a statute may be mandatory in some respects, and directory in others.
>
> "Duty to comply and result of noncompliance. As suggested by the definitions of the term, failure to comply with a mandatory provision of a statute renders a proceeding void, and when a mandatory statute is invoked the courts have no discretion in its administration except to enforce it as written. While noncompliance with a directory provision of a statute does not invalidate a proceeding, there is nevertheless a duty to comply even with purely directory provisions, as nearly as practicable, and the provisions of a directory statute may not be ignored to the prejudice of one making timely objection. Where, however, statutes are phrased in permissive language, the meaning may well be that the persons to whom they are addressed enjoy a discretion to do or refrain from doing the things mentioned.

73 American Jurisprudence Second § 1920 states:

"Generally; materiality of provisions.

"There is no well-defined rule by which directory provisions in a statute may, in all circumstances, be distinguished from those which are mandatory. In the determination of this question, as of every other question of statutory construction, the prime object is to ascertain the legislative intention.

"In determining the mandatory or directory nature of a statute, the importance of the provision involved may be taken into consideration. Generally speaking, those provisions which are a mere matter of form, or which are not material, do not affect any substantial right, and do not relate to the essence of the thing to be done so that compliance is a matter of convenience rather than substance, are considered to be directory. This is true of statutory provisions for the expeditious, proper or orderly conduct of business merely.

"20 Consequences.

"In making a statute mandatory or directory, the courts may take into consideration the consequences which would result from construing it one way or the other. For this purpose, the courts apply such general principles or construction as the rule that a statute should be given a

construction which permits a reasonable operation. A statutory provision is generally regarded as directory where a failure of performance will result in no injury or prejudice to the substantial rights of interested persons."

The Oklahoma case law does not contain many cases presenting a factual situation such as the one presented by 70 O.S. § 6-103.4(a). However, in *Kavanaugh v. Fash*, 74 F.2d 435 (10th Cir., 1934), the board of directors of a bank failed to authorize a certain action by a resolution of the board of directors as specifically required by statute. The Court held in the *Kavanaugh* case that:

> "The statute provides (1) that generally a bank may not prefer one depositor or creditor by a pledge of assets; (2) that it may make such a pledge to secure deposits of public funds; and (3) that in doing so the action *shall* be authorized by a resolution of the Board of Directors unanimously adopted and placed in record in the minute book. It is not provided that a pledge made otherwise than in the specified manner shall be void, nor is there anything in the act to indicate a legislative intent to invalidate a pledge made for the authorized purpose without compliance with its provisions. *A statute is mandatory if it is the essence of the thing required; otherwise, it usually is directory.* The essence of a pledge of the kind in question, ordinarily made by a directing officer of the bank, is the setting apart and delivery of the assets with an agreement that they shall constitute security for the money deposited. The resolution is preliminary and procedural thereto. Diligent search indicates that the Supreme Court of Oklahoma has not considered this exact question, but the views expressed seem to find support by way of analogy in *Mays v. Board of County Commissionars, supra.* It was there held that the provision contained in section 5727, C.O.S. 1921, now section 7428, O.S. 1931, requiring that securities tendered as a pledge to secure county deposits be submitted to the county judge and county attorney and be by them approved, *is directory and that failure to comply with it does not invalidate the transaction.* In like manner we think the provision relating to the resolution of the Board of Directors is modal and failure to follow its terms does not render ineffective a pledge made and acted upon in good faith. (Emphasis added), *supra,* at 437.

It is very important that 70 O.S. § 6-103.4 and other sections comprising this act do not in any way state the different requirements are mandatory and do not in any way state the failure to comply with any or all of these requirements shall render actions taken thereunder invalid or void. See *In re Vrooman's Estate,* 240 P.2d 754, 206 Okl. 8 (1952); *Miller v. State,* 232 P.2d 651, 94 Okl. 198 (1951); *John C. Winston Co. v. Vaughan,* 11 F.Supp. 954, affirmed 83 F.2d 370.

The attorney for Mr. Harrison in her brief filed in this case argues that the case of *Oldham v. Drummond Board of Education,* 542 P.2d

1309 (Okl. 1975) should control in the case which is before the hearing judge. In the *Oldham* case a school board voted not to renew a teacher's contract but failed to follow the procedure required by 25 O.S. 1971 § 201, the Open Meeting Law. The Oklahoma Supreme Court held that the action of the school board was invalid. However, the *Oldham* case is clearly distinguishable because 25 O.S. 1971 § 201 contained the following language:

> "Any action taken in violation of the above provisions shall be invalid."

Thus, the statute itself clearly spelled out that the provisions were mandatory. The *Oldham* case in no way supports the position that the provisions in 70 O.S. § 6-102.1 *et seq.* are mandatory. In fact, this case also states in *dicta* that the interpretation of the word "shall" depends upon legislative intent.

Much closer to our factual situation presented by the case involving Mr. Harrison is the case of *McCarter v. Spears*, 157 Okl. 168, 11 P.2d 489 (1932). The school board elected its clerk by acclamation instead of ballot. The applicable statute required election by ballot. The Oklahoma Supreme Court held:

> "Where the statutes simply provide that certain acts or things *shall* be done within a particular time or in a particular manner, and do not declare that their performance is essential to the validity of an election, they will be regarded as mandatory if they do, and directory if they do not affect the actual merits of the election. *Missouri Pac. R. Co. v. McIntosh*, 92 Okl. 153, 218 Pac. 693." *Supra*, at 169 (Emphasis added.)

The hearing judge finds that there is little significance and/or importance attached to the fact that the recommendation by the superintendent was made orally instead of in writing to the school board. Under the statutes a teacher is not given a copy of the recommendation by the superintendent. Under Senate Bill 249 the teacher is entitled to written notification stating the grounds, but in this case the teacher did receive the written notification stating the grounds. The ground in his written notification, willful neglect of duty, was the same ground presented orally by the superintendent to the school board. The minutes of the school board also reflect the action taken by the board, showing specifically how each member voted and that Dr. Hock cast a dissenting vote.

The hearing judge specifically finds that the actions of the school board were properly documented. The teacher was given proper notification and in no way have the rights of Mr. Harrison not been fully protected, which is the purpose of Senate Bill 249. It is difficult to conceive of any circumstances under which a teacher could be prejudiced by an oral recommendation instead of a written recommendation when the teacher himself never receives a copy of the recommendation. It is

specifically found that 70 O.S. § 6-103 (a), as far as it requires that a written recommendation be submitted to the board of education by the superintendent of schools, is clearly directory and not mandatory in that, therefore, failure to strictly comply with the statute did not render the action by the Kingston School Board invalid.

It is specifically further found that the preponderance of the evidence and law that a recommendation either written or oral, by the superintendent, is not even required under the statute. The first sentence of section 6-103.4(b) states:

> "If the local board of education approves the recommendation of the superintendent, or *determines on its own volition that a tenured teacher should be dismissed or nonreemployed,* the board shall cause written notice of the dismissal or nonreemployment to be mailed by Certified Mail, Restricted Delivery, with Return Receipt Requested, to the teacher who is the subject of the action." (Emphasis added.)

15. The hearing judge specifically finds that the Kingston Board of Education did adopt on November 7, 1977, an adequate evaluation policy pursuant to Senate Bill 249; that said policy stated that all teachers should be evaluated twice yearly, said policy requiring more evaluation of tenured teachers than 70 O.S. § 6-102.2, which requires tenured teacher evaluation only once every three years. That the teachers who adopted the policy did not, in fact, expect it to go into effect until the 1978-79 school year despite working to the contrary, even though this intention does not state the effective date of the policy. Mr. Boyce Harrison was not evaluated in the 1977-78 school year according to the formal written procedures or the prescribed written forms.

The basic question of law is the same as just presented in regards to the question of law requiring a written recommendation rather than an oral recommendation by the school board. It is a question of first whether the statutory provision or school policy is mandatory or directory. Under the evidence there are additional questions. The second issue is whether there has been substantial compliance by the Kingston Board of Education in regards to 70 O.S. § 6-102.2, and the third question is whether, by his own actions, Mr. Harrison waived his right to object or is estopped at this late date from raising this question.

The final question is whether Mr. Harrison has suffered any prejudice by not being evaluated on the specific numbered evaluation sheets rather than the volumes of letters and other written documentations made by the principal, superintendent and other administrators in trying to get Mr. Harrison to follow the established school policy and to conduct his classes in accordance with state law.

70 O.S. § 6-102.2 provides:

"Prior to October 15, 1977, each board of education shall establish, following consultation or involvement by representatives selected by local teachers, a written policy of evaluation for all teachers, including administrators, in accordance with this act. In those school districts in which there exists a professional negotiations agreement made in accordance with Section 509.1 et seq. of Title 70 of the Oklahoma Statutes, the procedure for evaluating members of the negotiations unit shall be a negotiable item. Nothing in this act shall be construed to annual, modify or to preclude the renewal or continuing of any existing agreement heretofore entered into between any school district and any organizational representative of its employees. Every policy so adopted shall:

1. Be prescribed in writing at the time of adoption and at all times when admendments thereto are adopted. The original policy and all amendments to the policy shall be promptly made available to all teachers;
2. Provide that all evaluations be made in writing and that evaluation documents and responses thereto are to be maintained in a personnel file for each teacher;
3. Provide that commencing no later than the 1977-1978 school year every probationary teacher shall be evaluated at least two (2) times per school year, once prior to November 15 and one prior to February 10 of each year, and that every tenured teacher shall be evaluated at least once every three (3) years, except as otherwise provided by law; and,
4. Provided that, except for superintendents, who shall be evaluated by the local school board, all certified personnel, including administrators, shall be evaluated by certificated administrative personnel designated by the local school board."

The evidence shows that the Kingston Board did establish a written policy of evaluation. It has not been challenged as insufficient or inadequate. It is admitted that no evaluation on the forms and according to the formal procedures set forth in the written evaluation was made on Boyce Harrison during the 1977-1978 school year. It should be emphasized, however, that the statute requires a tenured teacher's evaluation only once every three years. Thus, the hearing judge finds there has been no failure to comply with the evaluation procedures required by state statute.

The above cases and discussion of when a provision of a statute is mandatory or directory applies with even greater force to an internal rule or policy adopted by the school board. The fundamental rule is that a school board may hire and fire teachers subject only to statutory limitations. See 78 C.J.S. 2d, Schools and Schools Districts, Section 201, page 1074. In no way has the school board made the policy mandatory on itself. The policy is directory only.

70 O.S. § 6-103.2 states:

"Admonishment of teacher

'Whenever a principal who has the administrative responsibility under the supervision of the superintendent of a school district to plan, manage, operate and evaluate the educational program of a particular school attendance area and who has carried out the provisions of Section 2 of this act believes it is necessary to admonish a teacher in the district for a reason he believes may lead to the teacher's dismissal or nonreemployment, the principal shall:

1. Bring the matter to the attention of the teacher in writing, and make a reasonable effort to assist the teacher to correct whatever appears to be the cause for potential dismissal or nonreemployment; and,

2. Allow a reasonable time for improvement, which shall not exceed two (2) months. The nature and gravity of the teacher's conduct shall be considered in determining what length of time would be reasonable. If the teacher does not correct the cause for potential dismissal or nonreemployment within a reasonable length of time, the principal shall make a recommendation to the superintendent of the school district for the dismissal or nonreemployment of the teacher.

All of the above arguments about mandatory or directory effect of a statute would be applicable again, but it is further respectfully asserted that there has been substantial compliance with these statutory provisions. In connection with the continuing problems of Mr. Harrison not keeping his students in class for the required period of time, Principal Caldwell sent him a letter on August 16, 1977, telling him not to dismiss the third hour shop class until 12:00 o'clock noon. (See Kingston School Board exhibit #1). Principal Caldwell talked to the students himself after the problems continued. Further oral communication failed. Principal Caldwell presented Mr. Harrison with documentation of a teacher's conference, but Mr. Harrison refused to sign it and did not make or offer to make any connections or state his reasons for disagreeing with it.

Principal Caldwell attempted to document the problem in a formal written manner on August 19, 1977 (See Kingston School Board exhibit # 4). Mr. Harrison refused to sign the documentation or to participate in the procedure. Likewise, on September 29, 1977, Superintendent McFatridge tried to document the problem of power machinery being used by unsupervised shop students (See Kingston School Board exhibit # 9), but again Mr. Harrison refused.

70 O.S. § 6-102.3 states:

"Whenever any evaluation is made of a teacher a true copy of the evaluation shall be presented to the teacher. The teacher shall acknowledge the written evaluation by his signature thereon.

Within two weeks after the evaluation, the teacher may respond and said response shall be made part of the record. . . ."

In addition to these provisions being directory only and that the Kingston School Board has substantially complied with the statutory provisions, it is further found that Mr. Harrison has waived any right to object because of his wrongful refusal to sign the documentation or to respond when a reasonable teacher in his position would have done so. Further, the record does not show that Mr. Harrison has been prejudiced in any way by not having been evaluated. The evidence shows that Mr. Harrison believed the administration had been out to get him for two years. He certainly cannot claim surprise. Mr. Harrison also testified that Principal Caldwell spent more time on him than any other teacher. It was obvious to Mr. Harrison that the administration was not happy with him. They had made repeated complaints, oral and written, and the basis for the complaints was stated in detail. Mr. Harrison "detested" what he thought the administration was trying to do. Under these circumstances a formal evaluation on the written forms would have been useless. Mr Harrison did not testify that he had been prejudiced and the evidence shows no such prejudice.

16. The Hearing Judge finds that the teacher's MOTION TO DISMISS based upon the grounds that:

> "The Board of Education members apparently based their decision to nonrenew the teacher's contract on events and incidents which occurred prior to the current contract year in violation of Attorney General Opinion 76-378 (January 17, 1977)."

is without merit. Inherent to this ground for dismissal is the same question of the admissibility of evidence at the hearings held in this matter. The Attorney General Opinion generally states that the evidence must be limited to the contract year, which in this case would begin July 1, 1977, according to the opinion, unless prior evidence falls into an exception which is more specifically outlined in the opinion.

Let us first examine the evidence which without dispute or contradiction occurred after July 1, 1977.

(1) The refusal or failure of Mr. Harrison to keep his students in class the full class period began August 15, 1977 and continued through the 1977-1978 school year.

(2) Mr. Harrison's refusal to sign the documentation presented to him by Principal Caldwell occurred on August 19, 1977.

(3) The failure of Mr. Harrison to supervise his students at the assembly and his leaving the school assembly without authorization occurred on March 1, 1978, during the 1977-1978 school year.

(4) The incident of Superintendent McFatridge finding the students operating power equipment in the classroom with Mr. Harrison absent and the subsequent refusal of Mr. Harrison to

discuss the matter with Superintendent McFatridge and his further refusal to acknowledge receipt of documentation concerning this incident and his further failure to sign said documentation occurred about September 29, 1977, during the 1977-1978 school year.

(5) The purchase by Mr. Harrison of additional unauthorized material from McKnight Publishing Company in the sum of $294.15 occurred in April and May, 1978, during the 1977-1978 school year.

After Mr. Harrison's contract had been renewed in March, 1977, for the 1977-1978 school year, evidence was presented regarding three incidents which occurred after his contract had been renewed but before the beginning of the contract year. Since these incidents occurred after the decision of the board to renew it is strongly contended that such incidents would be proper to take into consideration in making the decision the next year whether to renew the contract.

One incident occurred in April, 1977, when Mr. Harrison allowed his son to spend three full days of school working in the shop class contrary to the general instructions of the Kingston School System and falsely reporting that his son had been ill for three days. The second incident in May, 1977, involved the problem with Mr. Harrison's students leaving class early and causing damage to the bus.

Mr. Harrison was confronted by Principal Caldwell but in the presence of another witness refused to respond or to give any explanation and failed to follow instructions and/or to cooperate in the investigation of a matter involving students under Mr. Harrison's supervision who were alleged to have destroyed school property. The third incident occurred on May 13, 1977, when without notification to the administration, Mr. Harrison locked up the shop building and left school. The other evidence offered by the school board going back beyond the time it previously renewed Mr. Harrison's contract relates to the unauthorized purchase of a compound bow from Ward's Hardware, the unauthorized purchase of two welders and the subsequent removal of said welders to Mr. Harrison's private residence.

Further evidence was introduced that Mr. Harrison failed to return said welders when requested to do so by the school board and, in fact, sold one of the welders in June of 1977. There is the further accusation by the school board that Mr. Harrison failed and refused to follow the proper procedure regarding the purchase of shop materials and the handling and collecting of student money in particular to circumstances surrounding the indebtedness of approximately $1,400.00 incurred by Mr. Harrison when he purchased lumber from Paxton Lumber Company for individual student projects and failed to collect the money to pay this bill even though he had written Paxton Lumber Company stating that he would take care of the matter by paying approximately $200.00 each month until the bill had been completely paid.

In the Attorney General Opinion, the attorney general held that there was an exception to the general rule that evidence prior to the

current contract year could not be admitted.

The opinion states:

> "Where such collateral evidence affords a reasonable presumption or inference as to material facts in dispute,"

there is an exception. He went on to state:

> "Based upon the above noted decisions, it can only be concluded that the determination of the propriety of considering prior contract years conduct or acts in teacher dismissal proceedings must be made on a case by case basis."

The last sentence in the opinion states:

> "However, *if* such collateral evidence clearly tends to establish or refute material issues or facts in dispute, which issues concern present grounds for dismissal, such evidence may be considered."

The evidence of the purchase of the bow and two unauthorized welders is clearly relevant because it was out of this incident that Mr. Harrison was admonished clearly and in no uncertain terms that he was not to make unauthorized purchases. Mr. Harrison admits that he received such admonishment in November and December meetings when Superintendent McFatridge confronted him with the bills for the unauthorized purchases.

The evidence of when and how the two welders were purchased is crucial and necessary to understand the series of events which occurred during the summer of 1977 which resulted in special meetings and special actions by the school board after July 1, 1977. The evidence showed that after July 1, 1977, the school board had to bring in an attorney and had to threaten legal action against Mr. Harrison in order to get him to turn over to the school the funds he had received from the unauthorized sale of the welders.

Thus, the great weight of the evidence relates to events after July 1, 1977. This evidence alone justifies the decision not to renew. This evidence shows a repeated failure on the part of Mr. Harrison to cooperate and to follow instructions. Mr. Harrison admitted that he thought the principal and superintendent were out to get him and that he was being set up to be terminated and that this belief that he was being "framed" existed approximately two years prior to Mr. Harrison's contract not being renewed.

Further, Mr. Harrison stated that he had adopted a policy of ignoring Principal Caldwell and Superintendent McFatridge and that the administrators had told Mr. Harrison that they would see how he did during the 1977-1978 school years and whether or not he followed their directions and followed their suggestions in performing his duties as a teacher. After being told this, Mr. Harrison "detested" Mr. Caldwell and

Mr. McFatridge and adopted a policy of ignoring their counseling sessions and repeated reprimands.

The hearing judge finds that a teacher has the duty to cooperate with his principal and superintendent, therefore, if a teacher has the duty to cooperate with his principal and superintendent, then the principal and superintendent in this case were clearly justified in not recommending Mr. Harrison's renewal. In no way has Mr. Harrison shown that Principal Caldwell or Superintendent McFatridge were arbitrary, capricious or unjustified in giving instructions and requesting cooperation from Mr. Harrison.

The hearing judge finds that under the preponderance of the evidence presented, the school board's decision not to renew should be upheld even if the Attorney General Opinion were a correct statement of the law.

It is respectfully submitted that the Attorney General Opinion is erroneous and that evidence of misconduct in previous years can be considered by the school board in not renewing a teacher's contract.

There is no statutory limitation on the evidence to be considered and no time limit. In his opinion, the Attorney General states:

> "Accordingly, such other contracted years' evidence or information is generally inadmissible and should not be considered by the board."

The Attorney General Opinion cites the case of *School District No. 39, Mayes County v. Hicks*, 138 Okl. 143, 280 Pac. 606. However, the factual situation in the *Mayes County* case shows that it is clearly distinguishable from Mr. Harrison's case. In the Mayes case the school teacher had been fired for being incompetent and failing to maintain discipline. The teacher sued the school board and won a jury verdict for her unpaid salary. As part of her case the teacher introduced evidence that after she was fired by the Mayes County school board she went elsewhere to work and introduced evidence that during the next two years she had successfully taught elsewhere. The Oklahoma Supreme Court reversed the case holding that the evidence should be limited to what had happened up to the time the school board fired the teacher. The hearing judge could not agree more strongly with the decision and respectfully asserts that in no way does it hold that a school board cannot go back beyond the present contract year. In fact, it is a misleading citation to give in support of the statement made in the Attorney General Opinion.

The other Oklahoma cases cited in the Attorney General Opinion do not involve school boards or teachers or the question of limitation of evidence to a particular contract year. These cases will not be discussed or analyzed in detail by the hearing judge because, frankly, they are totally irrelevant. These cases go no further than to say that irrelevent evidence should not be admissible. In no way do the cases hold that evidence of incidents occurring prior to the beginning of a contract year

is irrelevant or inadmissable. Since there is no statutory basis or case law basis for holding that evidence occurring before the beginning of the contract year is inadmissable, what other reasoning supports or takes away from this theory?

The Attorney General Opinion and interpretation could lead to the following results:

1. A teacher could commit gross acts, even criminal acts constituting a clear basis for dismissal, but if his acts were not discovered before the subsequent year, the teacher could not be fired because of said actions.
2. A school board would under certain circumstances be precluded from considering what had happened between April 10 and June 30 the previous year. Since the school board is required to act upon the teacher's contract before April 10 of each year for the upcoming year, (See 70 O.S. § 6-101 (E)) and since according to the Attorney General Opinion the upcoming contract year runs from July 1 to June 10, there is a period of time from April 10 to June 30 that the teacher's actions are unknown and yet would not be able to be taken into consideration the next year when the next determination to renew or not to renew is made.

The hearing judge finds that this reasoning by the attorney general is against all common sense and human experience to establish an arbitrary cutoff time in connection with the teacher and his performance. A decision by a school board to fire or not to renew a teacher is a serious decision and should not be made without due deliberation and thought. It may well be that the teacher's action over a period of time may cause the school board to believe that it is in the best interest of the school district to fire or not to renew the teacher's contract. This decision may not be based upon one act at one time but a series of commissions or omissions over a substantial period of time. In fact, the school board may want to allow the teacher to have a second chance and not fire the teacher at a particular time even though the school board has a justifiable basis for doing so. By the Attorney General Opinion, the teacher could take advantage of a school board's willingness to give the teacher "a second chance" if this arbitrary date of July 1 happens to pass by. One omission or commission in and of itself may not justify a decision to fire or not to renew and yet be clearly justifiable if the omission or commission is made after having been given a second or third chance. This arbitrary cut-off date on the admissibility of evidence is clearly against the best interest of the students and the school district. It is further respectfully submitted that it is also against the best interest of the teachers because the long run effect would be that administrators and school boards would be much more reluctant to give teachers a second chance and to try to work out the different problems over a period of time. The Hearing Judge respectfully submits that the opinion by the Honorable Joe Cannon, Chief District Judge for Oklahoma County, in the case of *Independent School District No. 20 of Muskogee County,*

Oklahoma, and Independent School District No. 2 of Sequoyah County, Oklahoma v. The Professional Practices Commission, et al., should be followed in this case. Judge Cannon in the above cited case held that the Professional Practices Commission was directed to hear such evidence of other contractual years along with evidence for the immediate contractual year in question.

The preponderance of the evidence shows that Mr. Harrison has on numerous occasions willfully neglected his duty as a teacher in the Kingston School System and, therefore, the decision of the school board not to renew his contract should be sustained. During this hearing there was evidence and admissions that Superintendent McFatridge had not complied with all statutory and school board directives. There were questions raised concerning the expenditure of funds from the general fund to pay bills arising in the special activity accounts.

It must be remembered, however, that these questions or criticisms of Superintendent McFatridge are irrelevant to this hearing. Mr. Harrison's willful neglect of duty is not excused by omissions or commissions by Mr. McFatridge. If the school board chose not to renew Superintendent McFatridge then such evidence would be relevant to that hearing, but only that hearing. It is now a completely moot question because Mr. McFatridge has resigned and Principal Caldwell is the new superintendent. There was evidence introduced in regards to Mr. Harrison's abilities as an industrial arts teacher and the fact that he had won numerous awards and that his students had won state and national awards in regards to industrial arts shows. However, Mr. Harrison is not charged with incompetency but rather with willful neglect of duty. With all due respect to Mr. Harrison's abilities as a teacher the evidence clearly shows that he did not cooperate with and follow the reasonable instructions that his principal, superintendent and school board members gave him. A teacher does have a duty to cooperate with and follow instructions of the principal and superintendent.

Therefore, the hearing judge finds that the school board acted reasonably and properly in not renewing Mr. Harrison's contract. Such lack of cooperation and failure to follow instructions and Mr. Harrison's defiant attitude would undermine any organization's ability to properly function. It is never easy to judge the conduct of another and the Hearing Judge as well as the Hearing Panel members did their best to ascertain objectively as many of the facts surrounding the decision by the Kingston School Board to not renew Mr. Harrison's contract. It is never easy to fire or not renew a teacher's contract but under the evidence and the law, the Kingston Board of Education decision should be sustained and Mr. Harrison should be required to seek employment elsewhere.

CHAPTER 12

DECISIONS ACCORDING TO STATUTORY CAUSE FOR TERMINATION

Note: 70 O.S. § 6-103 lists the following grounds for which a tenured teacher can be dismissed or non-renewed: immorality, willful neglect of duty, cruelty, incompetency, teaching disloyalty to the American constitutional system of government, or any reason involving moral turpitude. 70 O.S. § 6-103.15 provides an additional ground of engagement in public homosexual activity which renders a teacher unfit to perform teaching duties.

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